Supreme Court, U.S.
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No. 97-1985

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

ELLIS E. NEDER, JR., PETITIONER,

v.

UNITED STATES, RESPONDENT.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

JOINT APPENDIX

JAVIER H. RUBINSTEIN*
GARY S. FEINERMAN
KASPAR J. STOFFELMAYR
THOMAS B. NACHBAR
ANDREW H. SCHAPIRO
Mayer, Brown & Platt
190 South LaSalle Street
Chicago, Illinois 60603
(312) 782-0600

Counsel for Petitioner

SETH WAXMAN*
Solicitor General of the United States
U.S. Department of Justice
Washington, DC 20530
(202) 514-2217

Counsel for Respondent

* Counsel of Record

PETITION FOR CERTIORARI FILED JUNE 9, 1998
CERTIORARI GRANTED OCTOBER 13, 1998

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The following judgment and opinion have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition for a Writ of Certiorari:

Judgment of the United States District Court for the Southern District of Florida, dated September 15, 1992 . . . . . 14a

Opinion of the United States Court of Appeals for the Eleventh Circuit, dated March 19, 1998 . . . . . 1a

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

ELLIS E. NEDER, JR.

No. 91-175-CR-J-16

RELEVANT DOCKET ENTRIES

08/23/91	1	INDICTMENT RETURNED AT JACKSONVILLE, FLORIDA (ALL DEFTS)
08/23/91	2	AO 257 Defendant Information Sheet filed (NEDER)
08/23/91	15	MOTION for Capias. (NEDER)
08/23/91	16	ORDER GRANTING Motion for Capias and a capias (NEDER) shall issue for the Deft's arrest. Upon Motion of the U.S. the Indictment shall remain sealed until the Deft is taken into custody. /s/HTS (Parties notified)
08/23/91	*	WARRANT for Arrest issued as to all Defts listed in documents 15 through 38.
10/15/91	*	Appearance Bond: 250,000 PRB sucured by the 2 pro-parties in Fla. and COS by Deft's Son and Father-in-law and PSA., Posting of Property and Father Cosign, by 10-15-91.

10/15/91	144	RECORD OF HEARING: INITIAL APPEARANCE HTS (NEDER) Deft appeared with retained counsel, Thomas Fallis Mr. Fallis announced he will no longer be retained after this date. Deft arrested in New York, appeared before U.S. Magistrate Judge , ordered to report to the M/D of Florida. Deft advised of charges, penalties and special assessment & rights Further inquiry re: counsel/indigency scheduled for 10/16/91, 2:00 p.m. Bond previously set in S/D of New York. Govt requests the Court re-visit the matter of bond. Bond Reset: $250,000 c/s Conditions of Release: travel is restricted to M/D of Florida and S/D of New York. Contact PTS telephonically every Monday, Wednesday and Friday. Prior to release Deft: shall provide the Court with a satisfactory address where he will be residing when in Jacksonville, FL to answer to the charges. The court shall conduct a Nebbia hearing to determine the source of collateral being utilized in posting the bond. Pending in this District, he shall not change his New York address without prior permission of the Court.
10/15/91	145	ORDER Setting Conditions of Release. /s/ HTS (NEDER) (Parties notified)
10/16/91	153	RECORD OF HEARING: STATUS RE COUNSEL HTS (NEDER) Thomas Fallis appearing for limited purposes. Argument by parties. C. Hugh Blanton, Jr., is appointed upon motion of the U.S., Deft

		may be required to reimburse in whole or in part for attorney fees/costs. Arraignment: 10-16-91, 4:00 p.m.
10/16/91	155	RECORD OF HEARING: ARRAIGNMENT HTS HTS Hearing on Motion to Modify Conditions of Pre-Trial Release (152) and Arraignment (NEDER) Hugh Blanton telephonically communicated with Judge Snyder's Chambers and indicated that he was unable to accept appointment. Thomas Fallis is appointed to represent Deft. ARRAIGNMENT: Deft advised of rights, charges penalties and special assessment. Not guilty plea entered. Court defers ruling on Motion, Deft to supplement Motion by noon, 10/18/91. Hearing: 10/21/91, 10:30 a.m.
10/16/91	157	ORDER: 1. All pretrial and discovery motions (NEDER) including any motions to dismiss and/or sever, shall be filed, and copies served on counsel for the U.S., on or before 10/24/91. The U.S. shall orally reply to the motions at the discovery hearing scheduled for 10/29/91, 9:00 a.m. 2. Pursuant to the order resulting from the discovery hearing, the U.S. shall disclose discovery materials no later than 11/1/91. Any motions prompted by a review of the discovery materials shall be filed on or before 11/13/91, and the U.S. shall reply to the motions on or before 11/20/91. An Evidentiary hearing and or oral argument on any motions filed will be held on 11/21/91, 9:00 a.m. /s/HTS (Parties notified)

10/16/91 158 ORDER Appointing Thomas Fallis, Esquire as (NEDER) counsel for Deft. Upon motion of the U.S., Deft may be required to reimburse the U.S. in full or in part for attorney's fees and costs. /s/HTS (Parties notified)

10/17/91 160 RECORD OF HEARING: STATUS CONFERENCE JHM (ALL DEFTS) Estimated length of trial: 2 months - Jury. Peremptory Challenges allowed: Govt - 13; Deft-22 Counsel for Deft directed to designate lead counsel. All Defts will file waiver of Speedy Trial through 3/18/92. Court Orders separate jury panel for trial of this case. Govt directed to furnish Court with summary of Indictment 5 days prior to trial. Jurors will be allowed to take notes at trial. Counsel are directed to make arrangements with Court Reporter in advance of trial date if daily copy is anticipated. Trial is continued until 2/18/92, A Status Conference will be for 2/7/92, 9:00 a.m. JHM Plea Agreement deadline: 1/31/92, 5:00 p.m.

10/18/91 167 WAIVER of Speedy Trial through 3/18/92 (NEDER)

10/18/91 193 AMENDED SCHEDULING ORDER: (ALL DEFTS) 1. All pretrial and discovery motions, including any motions to dismiss and/or sever, shall be filed on or before 10-30-91. The U.S. shall reply in writing on or before 11-08-91. The discovery hearing is scheduled for Thursday 11-14-91 at 9:00

a.m. 2. Pursuant to the Order resulting from the discovery hearing, the U.S. shall disclose discovery materials no later than 11-19-91. Any motions prompted by a review of the discovery materials shall be filed on or before 12-13-91 and the U.S. shall reply to the motions on or before 01-02-92. An evidentiary hearing and/or oral argument will be held on 01-07-92 at 9:00 a.m., before HTS (parties notified.

10/24/91 207 WARRANT returned executed by U.S. marshal by (NEDER) arresting deft on 10-15-91

10/29/91 219 MOTION for Adoption; by deft of deft Fogg's (NEDER)

a) Motion to Disclose confidential Informants (92)
b) Motion for Identification and Assurance of Production of Materials which are questionably considered to be "Jencks Materials" & MEMO (191)
c) Motion for Notice by the Govt of Intention to Rely Upon Other Crimes Evidence (180)
d) Motion for Appointment of Real Estate Appraisers (179)
e) Motion to Produce All Appraisals & Work Sheets
f) Motion for Names, Addresses and Statements of Individuals not be called as Witnesses/MEMO (187)
g) Motion for Disclosure of Criminal Records of govt witnesses and Co-defts. (188)

i) Motion to Compel Immediate Disclosure of Brady (189)
j) Motion to Interview Prospective govt witnesses (190)

11/12/91 398 MOTION to Adopt deft SMITH's Motion to Dis- (NEDER) miss; by deft /MEMO

11/12/91 399 MOTION to Adopt deft ARINGTON's Motion to (NEDER) Dismiss; by deft /MEMO

11/12/91 400 MOTION Adopt deft TURNER's Motion to Dismiss (NEDER) by deft /MEMO

11/12/91 401 MOTION to Adopt Deft FREEMAN's Motion to (NEDER) Dismiss; by deft /MEMO

11/12/91 402 MOTION to Adopt deft MARSH's Motion to Dis- (NEDER) miss; by deft /MEMO

11/12/91 403 MOTION to Adopt deft MANNS' Motion to Dismiss (NEDER) by deft /MEMO (392)

11/12/91 404 MOTION to Dismiss by deft /MEMO (various cts) (NEDER)

11/12/91 405 MOTION to Adopt deft MOORE's Motion to Dismiss (NEDER) by deft /MEMO

11/12/91 406 MOTION to Adopt deft KING's Motion to Dismiss (NEDER) by deft /MEMO

11/12/91 407 MOTION to Adopt deft MCDANIEL's Motion to (NEDER) Dismiss; by deft /MEMO

11/12/91 408 MOTION to Adopt deft MILLIS' Motion to Dismiss (NEDER) by deft /MEMO

11/14/91 448 Deft's Motion for Adoption, (219) is GRANTED. Accordingly, deft is permitted to adopt the motions specified therein, except for 1(d). The rulings entered thereon shall apply. As to 1(d), this ruling is without prejudice to deft filing his own motion within 5 days, if appropriate. Motion for Disclosure of Electronic Surveillance (220) is GRANTED to the extent required by F.R.Cr.P.12(d)92), 16(a)(1)(A) and (C); otherwise DENIED. However, the U.S. has represented there is no electronic surveillance of which it is aware involving deft or his premises relating to the charges in the Indictment. Deft's Motion for Preservation of Notes and Tapes, (221) is GRANTED to the extent all rough notes pertaining to this case in existence as of the date of this Order shall be perserved by any law enforement agency connected with the cause; otherwise DENIED. Motion for Production of Law Enforcement Inverview Reports or Notes with Individuals Who Will Not be Witnesses at Trial, (223) is DENIED. Motion for Transcription of Grand Jury Minutes, (224) is DENIED. However, the parties have agreed to the reciprocal exchange of Jencks Act material 3 calendar days prior to trial. Motion for Disclosure of Impeaching Information, (225) is GRANTED as to paragraphs 1 to the extent the U.S. has agreed to the disclosure of records or information revealing the felony convictions or guilty verdicts attributed to any govt witness and further

GRANTED limited to actual trial witnesses to the extent required by Brady; 2 to the extent the U.S. has agreed to the disclosure of prior criminal acts of govt witnesses, which are knwon to the U.S., relating to the witnesses' truth and veracity; 3 to the extent required by Brady and Gigilo, limited to actual trial witnesses and to the extent known or, by the exercise of due diligence, may become known to the U.S. Attorney, and of which the witenss is aware, excluding witness attendance fees and per diem payment 4 to the extent the U.S. does not oppose the request and further to the extent required by Brady & Giglio; 8 to the extent required by Brady; otherwise DENIED. Motion to Adopt Deft Fogg's Motion to Dismiss, (397) is GRANTED and he is permitted to adopt the motion to extent it is applicable to him. Motion to Adopt deft Smith Motion to Dismiss (398) is GRANTED to the extent it is applicable to him. Motion to Adopt deft Arington Motion to Dismiss, (399) is GRANTED. Motion to Adopt deft Turner's Motion to Dismiss, (400) is GRANTED. Motion to Adopt deft Freeman Jr's Motion to Dismiss (401) is GRANTED. Motion to Adopt deft Marsh's Motion to Dismiss, (402) is GRANTED. Motion to Adopt deft Manns' Motion to Dismiss, (403) is GRANTED. Motion to Adopt deft Moore's Motion to Dismiss, (405) is GRANTED. Motion to Adopt deft King's Motion to Dismiss, (406) is GRANTED. Motion to Adopt deft

McDaniel Motion to Dismiss, (407) is GRANTED. Motion to Adopt deft MILLIS" Motion ot Dismiss, (408) is GRANTED.

11/22/91	482	MOTION for Severance; by deft (NEDER)
11/22/91	483	MOTION for Adopt deft Arington's Motion for (NEDER) Severance/MEMO; by deft.
11/22/91	484	MOTION to Adopt deft Fogg's Motion for Sev- (NEDER) erance; by deft (396)
11/22/91	485	MOTION to adopt deft Smith's Motion for (NEDER) Severance; by deft (454)
11/22/91	486	MOTION to adopt deft Freeman's Motionfor (NEDER) Severance; by deft.
11/22/91	487	MOTION to Adopt deft King's Motion for (NEDER) Severance; by deft (481)
11/22/91	488	MOTION to Adopt deft Manns; Motion for (NEDER) Severance; by deft (472)
11/22/91	489	MOTION to Adopt deft Marsh;s Motion for (NEDER) Severance; by deft. (475)
11/22/91	490	MOTION to Adopt deft McDaniel's Motion for (NEDER) Severance; by deft (381)
11/22/91	491	MOTION to Adopt deft Millis' Motion for (NEDER) Severance; by deft (473)
11/22/91	492	MOTION to Adopt deft Moore's Motion for (NEDER) Severance; by deft (471)
11/22/91	493	MOTION to Adopt deft Turner's Motion for (NEDER) Severance; by deft (468)

11/22/91	494	MOTION to Adopt deft Susan Turner's Motion (NEDER) for Severance; by deft.
12/06/91	510	ORDER entered as to following motions: ALL DEFTS.) (442) Deft. Fogg's Second Supplemental Motion to Adopt - GRANTED; (443) Deft. Millis' Motion to Adopt Motions Filed by Co-Defts. - GRANTED; (446) Deft. McDaniel's Notice of Adoption for Motion to Dismiss, construed as a motion to adopt - GRANTED; (451) Deft. Arington's Supplemental Motion to Adopt Specific Discovery Motions of Co-Defts. - GRANTED; (455) Deft. Marsh's Motion to Adopt Discovery Motions of Specific Co-Defts. - GRANTED; (456) Deft. King's Motion to Adopt Discovery Motion of Deft. Turner - GRANTED; (460) Deft. Neder's Motion to Adopt Discovery Motion of Deft. Turner - GRANTED; (461) Deft. Neder's pleading entitled "Memo of Law", construed as Motion to Adopt Memo of Law in support of Deft. Turner's Motion for Bill of Particulars - GRANTED; (462) Deft. Freeman's Motion to Adopt Turner's Memo of Law - GRANTED; (474) Deft. Millis' Motion to Adopt Deft. Turner's Memo in Support of Motion for Bill of Particulars - GRANTED; (483) Deft. Neder's Motion to Adopt Deft. Arington's Motion for Severance - GRANTED; (484) Deft. Neder's Motion to Adopt Deft. Fogg's Motion for Severance - GRANTED; (485) Deft. Neder's Motion to Adopt Deft. Smith's Motion for

Severance - GRANTED; (486) Deft. Neder's Motion to Adopt Deft. Freemans Motion for Severance - DENIED, as Deft. has not filed such motion; (487) Deft. Neder's Motion to Adopt King's Motion for Severance - GRANTED; (488) Deft. Neder's Motion to Adopt Deft. Manss' Motion for Severance - GRANTED; (489) Deft. Neders Motion to Adopt Deft. Marsh's Motion for Severance - GRANTED; (490) Deft. Neder's Motion to Adopt Deft. McDaniel's Motion for Severance - GRANTED; (491) Deft. Neder's Motion to Adopt Deft. Millis' Motion for Severance - GRANTED; (492) Deft. Neders Motion to Adopt Moore's Motion for Severance - GRANTED; (493) Deft. Neder's Motion to Adopt Deft. Turner's Motion for Severance - GRANTED; (494) Deft. Neder's Motion to Adopt Susan Turner's Motion for Severance - DENIED, no such Deft. All parties are presumed to have adopted motions to dismiss and motions to sever filed by Co-Defts. U.S.A. to provide reasonable notice, per Federal Rule of Evidence 404(b) no later than 15 days before trial; Disclosure of identity of witnesses need not be made until 3 days prior to trial. U.S.A. may seek reconsideration of this ruling within 5 days. /s/HTS (parties notified)

12/13/91	532	CONSOLIDATED RESPONSE to Defts' Motions to (ALL DEFTS) Dismiss Specific Counts of Indictment; by govt.
02/18/92	710	RECORD OF HEARING. JURY TRIAL IN OPEN COURT JHM (NEDER, SMITH,

JR, SMITH & ASSOC. FOGG) Deft Smith's Motion for sequestered Voir Dire Examination of Jurors is DENIED. (689) Order filed in Open Court. Deft Neder's Motion to Compel govt to produce all releases (687); Motion for Restraining Order, (686); Motionfor Change of Venue, (685); and Supplemental Motion for Continuance, (684) are DENIED. Order entered and filed in Open court. Deft Neder renews all motions previously made - DENIED. Jury Empanelled - Swearing of Jury is deferred until February 24, 1992. All Jurors not engaged in this cause are excused with instructions to call Court after 6:00 p.m. today for further instructions.

02/25/92 - 733 RECORD OF HEARING. RESUMPTION OF JURY TRIAL FROM 2/18/92 JHM Deft Neder's Motion in limine, re: "high life style" evidence at trial - DENIED. Jury reports and are sworn to try the case. OPENING STATEMENTS of counsel. Govt's witnesses: Wm. G. Hall Jr., Hilda Eagerton, Carl Gray and Robert Beaty. Govt exhibits 1,2,496,21,22, 5 thru 20 ,24 to 34 filed in evidence. Recessed until 9:00 a.m. 2/26/92

02/26/92 734 RECORD OF HEARING. RESUMPTON OF JURY TRIAL IN OPEN COURT. HES (Continued from 2/25/92) Govt's Witnesses: Barry Hurtz, Linda Clary, Robert Harold White, C.W. Singletary, John Sulik, Sidney W.Register Jr., Christina Johnson, Robert Charles Nagel. Govt;s exhibits nos. 4,35

through 51, 55 through 60, 70, 71, 76, 97, 98, 99, 105, 119, 123, 124, 142, 143, 160, 164, 165, 166, 183, 188, 190, 191, 205, 209, 210, 229, 232, 235, 236, 332, 333, 356, 360, 361, 492, 78, 80, 82, 84, 81, 85, 79, 83, 87, 89 and 90 filed in evidence. Jury trial recessed until 9:30 a.m. 2/27/92 (NEDER,SMITH,SMITH & ASSOC. and FOGG)

02/27/92 735 RECORD OF HEARING. RESUMPTION OF JURY TRIAL IN OPEN COURT. HES (Continued from 2/26/92) Govt witnesses: Robert Charles Nagel, Mildred Duddington, Robert Dudding, Emmett Pacetti and Margo Dour. Govt's exhibits nos 52A,52B,52C, 53A,53B,53C,54,75,88,91 through 96,100 through 103,106 through 118,120,121,122, 126 through 140,149 through 156,158, 159,161, 162,163,167,168,170,171,501,529 & 530, filed in evidence. Court strikes over act #72 from the record. Jury trial recessed until 9:30 a.m., March 2, 1992 (NEDER, SMITH, SMITH & ASSOC. & FOGG)

03/02/92 737 RECORD OF HEARING: RESUMPTION OF JURY TRIAL IN OPEN COURT HES (Continued from 2/27/92) Govt witnesses: Marga Doerr, Meryl Susan Gold, Jane Solomon, Richard Earl Walker and James D. Statler. Govt exhibits nos. 141,157,176 through 181, 184 trhough 187,189,192 through 197, 198 A&B, 199, 215 through 218, 219 A through F, 499 & 528A through E, filed in evidence. Jury trial recessed until

9:30 a.m., March 3, 1992. (NEDER, SMITH,SMITH & ASSOC and FOGG)

03/03/92 739 RECORD OF HEARING: JURY TRIAL RESUMED HES (NEDER,FOGG (HES) (SMITH & ASSOC., & ROY SMITH) Govt witnesses: Arthur Martell, Francis Wankowing Delores Brock, DAve Phillips and Edward Salem. Govt exhibits Nos: 200 thur 204, 206, 207, 208, 211 thru 214, 220 thru 225, 227 thru 231, 233 thru 234, 237 thru 240, 346 thru 348, filed in evidence. Jury Trial recessed until 9:45 a.m., 3/4/92 (HES)

03/04/92 740 RECORD OF HEARING: JURY TRIAL RESUMED (NEDER FOGG (HES (SMITH & ASSOCS., & ROY SMITH) Govt. Witnesses: Jon H. Anderson, Yvonne Baker Mary Kerr, Geraldine Moreau, David Owen. Oral Motion by Defts. Fogg & Smith for Mistrial and or severance, joined in by Deft Neder - Denied. Govt. Exhibits nos. 144 through 147, 243 thru 259, 260A through G, 272, 278A, 350 thru 355, 357, 358, 359, 362 thru 367, 534 A throuhgh C, filed in evidence. Jury trial recessed until 9:45 a.m., 3/5/92 (HES).

03/05/92 741 RECORD OF HEARING: JURY TRIAL RESUMED HES (continued from 3-4-92) Government's Witnesses: Linda Alexson, John William Kerr, Jr., Frnak Armstrong Green, James Robert Pierce, Richard Moyers, Cheryl Whisnant, Janet Miller, Sylvia M. Sanders and Warren K. Anderson,

Jr.. Govt. Exhibits 242, 273, 274A 274B, 275A, 275B, 276A, 276B, 277A, 277B, 278A, 278B, 279A.., 279B, 280A, 280B, 281A, 281B, 282A, 282B, 283A, 283B, 284A, 284B, 285A, 285B, 286A, 286B, 287A, 287B, 288A, 288B, 289A, 289B, 290, 291A, 291B, 292A, 292B, 293A, 293B, 294, 296, 297, 298, 299, 301, 302, 303A through J, 308 through 317, filed in evidence. Jury trial recessed until 9:30 a.m., March 9, 1992. (NEDER,SMITH,FOGG)

03/09/92 750 RECORD OF HEARING: Resumption of jury trial in open court. (NEDER, SMITH, SMITH & ASSOC.&FOGG) Govt Witnesses: Janet Suzanne King, Ralph R. Crabtree, Lara Sue Waters, Janet Taylor, Ramona Hoskins, Howard Lewis Rundquist and Winifred Stewart. Govt exhibits nos, 295,300, 304,305,306,307,319C,321C-D-G-H,322A and 323 C&D, filed in evidence. Jury trial recessed until 03/10/92 at 9:30 a.m.

03/10/92 751 RECORD OF HEARING. Resumption of jury trial in open court. (NEDER,SMITH, SMITH & ASSOC. & FOGG) Govt witness: Michael Loyd, Judy McQuaide, Irwin Michael Carasso, Stephen Donelan, William G Cooper Michelle Antlec. Juror note: re: acquaintance with govt witness, filed in open court - to be sealed. Court and counsel confer with juror and juror returns to the jury room. Govt exhibits nos. 173,174,175, 320A through 320H, 321A,321B,321E, 321F,322B through 322F,323A & 323B,

324A through 324E,325,326A through J, 330,335,336,338 through 345,470,472A through 472C, filed in evidence. Jury trial recessed until 9:30 a.m. 3/11/92 Court and counsel to confer at 9:15 a.m.

03/11/92 756 RECORD OF HEARING. Resumption of jury trial in open Court. HES (NEDER,SMITH, SMITH & ASSOC & FOGG) Govt Witnesses: Babette Fletcher, Carolyn J. Murphy, John H. Anderson - recalled, Paul Adler Govt exhibits nos 262,318,319A,319B,319D,33,334,368 through 376, 378 through 402, 404, 465, 466, 535A, 535B and 535C, filed in evidence. Deft Neder's exhibits nos 10, 17 & 13 filed in evidence Jury trial adjourned until 9:30 a.m. 3/12/92

03/12/92 757 RECORD OF HEARING. Resumption of jury trial in open court. HES (NEDER,SMITH, SMITH & ASSOC & FOGG) Govt witnesses: Stanley J. Burns, Brent Doolan, Jim D'Ambrosio, Greg Edmonds, Kay Green Jennings, Irene Ward, Marcus A. Fields, Jeffrey Simon, Robert M. Worthy, James A. Cochran, Lamar Long, Adair Harris, Govt exhibits nos. 407,409,411,413,414,415,416, 418 through 434, 436 through 439 441 through 443, filed in evidence. Jury trial recessed until 9:45 a.m. on March 16, 1992

03/16/92 762 RECORD OF HEARING: resumption of Jury trial in open court (continued from 3/12/92) #757 Govt witnesses: Doris L.

Ray, Phillip Grunman, Kevin S. Baker, Tom Timmons, Charles Bassett, Harold Everett, Michael Knuth, John D. Crawford, Mark S. Wood, Steven Edward Moore, Frankie Weddington. Govt exhibits nos 405,406, 408,410,412,417A, 417B,440,444 and 446, filed in evidence. Jury trial to recessed until 10:30 a.m. 3-17-92 (NEDER,SMITH, SMITH & ASSOC. & FOGG)

03/17/92 764 RECORD OF HEARING. (resumption of jury trial in open court) continued from 3-16-92 Govt witness: Stephen Wilerty and Ben Houdi.

03/18/92 769 RECORD OF HEARING. resumption of jury trial in open court. Continued from 3-17-92) HES Deft Neder reports to the Court through counsel, that he is ill. Court and Counsel Confer. Jurors are brought into open court and are excused to report at 9:20 a.m., trial is recessed until 9:30 a.m., 3/19/92 (NEDER, SMITH,SMITH & ASSOC. and FOGG) 30 Minutes

03/19/92 770 RECORD OF HEARING. resumption of jury trial in open Court. (continued from 3-18-92) HES Alternate juror #241, report telephonically that she has been involved in an automobile accident and will be late arriving - Court and counsel confer in open Court. Govt witnesses: Charles Tatelbaum, Stepehn Bruka, Paul Hagglund, Stephen Bean, Dale Beardsley, Brent Diehl, David Wrigley, F. Lowell Conlan Jr., Robert E. Roth, Harry John Smith. Govt exhibits nos.

61,62, 64 through 69, 72,73,74 264,266 268 through 271, filed in evidence. Jury trial recessed until 9:30 a.m., March 23, 1992. 6.0hrs.

03/23/92 774 RECORD OF HEARING; resumption of jury trial in open court. (continued from 3/19/92) HES 7.0 hrs Govt witness: Harry John Smith. Govt's exhibits nos. 489, 488, 504, filed in evidence.

03/24/92 781 RECORD OF HEARING: resumption of jury trial in Open Court. (continued from 3/23/92) 7.0 hrs. Court and Counsel confer re: charts exhibits Govt witnesses: Harry John Smith. Trial recessed until 9:30 a.m. March 25, 1992 HES

03/25/92 782 RECORD OF HEARING; resumption of jury trial in open Court. (continued from 3/24/92) HES 7.0 Govt witnesses: Stephen Jamir, Charles Rogers, Richard Sassi, Mary Millis, Janice Driggers. Deft Fogg's exhibit no. 7 marked for identification. The Court will hold a hearing on the Motion of Siguard Lucassen to Quash Subpoena Duces Tecum at 9:00 a.m., 3/26/92. Govt exhibit #543 filed in evidence. Trial recessed until 9:00 a.m. 3/26/92.

03/26/92 789 RECORD OF HEARING: resumption of Jury trial in open court (continued from 3/25/92) HES Outside presence of jury; Hearing on Motion of Sigaurd Lucassen to Quash Subpoena Duces Tecum-Argument of Counsel - Granted except as to paragraph 2 - Order to enter. Govt witnesses: Janice

Driggers (cont'd from 3/25/92), John Gay, Agent IRS. Govt. exhibits nos. 172,467,468,469, 473,474 and 542 received in evidence. Govt exhibits 160, 164,174,190,216,218,235 published to jury. Outside presence of jury deft Neder make oral motion for mistrial - DENIED. Court gives instructions to jurors re: testimony of witness John Gay. Govt rests. Jurors excused until Tuesday, March 31, 1992, at 1:30 p.m. Oral motion for judgment of acquittal as to deft Fogg argued. Court will hear the motions pursuant to Rule 29 (judmgment of acquittal) on Tuesday, March 31, 1992 at 9:30 a.m. Recessed until 3-31-92 at 9:30 a.m. 6.0 hrs.

03/31/92 800 RECORD OF HEARING. resumption of jury trial. (continued from 3/26/92) HES Counsel for deft Smith, Neil P. McLoughlin reported ill - not present. Court directs the Clerk to call off jurors from reporting at 1:30 p.m., this date. US. Attorney orally moves to dismiss Cts. 24, 25 and 29 of the Indictment - Granted. Smith case is estimated for 2 days; Neder case is estimated for 2 ½ days (will begin Monday morning) Fogg case is estimated for 2/3 days. Argument on Motions for judgmment of acquittal will be resumed tentatively at 8:30 a.m., April 1, 1992. (If Mr. McLoughlin is present) 1:30 p.m. Jurors not reached and reporting are: Juror Nos. 124, 226,119,69 and 95 (NEDER, SMITH, SMITH & ASSOC. & FOGG)

04/02/92 807 JUDGMENT; IT IS ORDERED that Deft Ellis E. Neder, Jr be discharged as to Counts 24, 25 and 29, and that Deft Roy F. Smith, Jr., Roy F. Smith, Jr & Associates, Inc. and Peter A. Fogg be discharged as to Count 24 of the Indictment and allowed to go hence without day for their return as to said counts. s/3/31/92 HES (parties notified) (NEDER, SMITH,SMITH & ASSOC & FOGG)

04/02/92 808 RECORD OF HEARING. resumption of jury trial continued from 3/31/92) HES Deft Smith's oral motion for judgment of acquittal. Argument in opposition of the defts' motions for judgment of acquittal presented by the govt. Govt exhibit #125 withdrawn - the Court directed that it will be marked for identification. Court will reconvene at 3:30 p.m. U.S. amended motion to quash subpoenas shall be heard on Monday April 6, 1992. The Court shall enter an order striking the following overt acts from Count One: 1,2,40-57,72, 74,87,89,98,103,149,155,160,172 and 173. Also, as to Count 89, the Court strikes the predicate racketeering counts 4(a),5 & 9. Based on a recent ruling by the 11th circuit Court of Appeals, the Court shall permit the defts to present expert tax testimony. The defts announced that the defense will not be as follows: NEDER - 5-7 days; SMITH - 3-5 days; FOGG - 2-3 days. Defts' motions for judgment of acquittal are denied. Trial

recessed until 9:30 a.m. 4/6/92 (NEDER, SMITH,SMITH & ASSOC.&FOGG)

04/06/92 810 RECORD OF HEARING. resumption of jury trial HES (continued from 4/2/92) Deft Neder's Witnesses: Thomas H. Fish, Susan H. Sprague, Boachl, Stanley J. Burns (previously called by govt) Deft Neder's exhibits nos. 2 through 6, and 20, filed in evidence. Jury trial recessed (Jurors excused until 9:30 a.m. 4/7/92) Hearing on govt's Motion to Quash (continued to 4/7/92 at 9:00 a.m.)

04/07/92 811 RECORD OF HEARING. resumption of jury trial. HES (continued from 3-6-92) NEDER,SMITH,SMITH & ASSOC. & FOGG) Arguments continued outside presence of the jury on govt's Motion to Quash Subpoenas (801) - Deft Smith will not call proposed witness Kubinsky, thereby rendering govt's Motion moot as to said witness - govt's motion to quash as to potential witness Hauberg is denied. Deft Neder's witness: Paul Hagglund (previously called by the govt., Thomas Washington Brook's III, Robert E. Roth (previously called by govt.) - this witness placed on stand but no testimony taken. Trial recessed until 9:30 a.m. 4/8/92)

04/08/92 814 RECORD OF HEARING: resumption of jury trial HES (continued from 4/7/92) (NEDER, SMITH,SMITH & ASSOC.& FOGG) Counsel for deft, Neder reports his deft is ill and not present in the Courtroom.

Court has the Clerk contact Ms. Pamela Bob of Pretrial Services to consult on a Medical Examination for Mr. Neder at Keeton Corrections (formerly Bannum Place) After consultations with Ms. Bob, the Options are an Acute Care Facility to close to Keeton Corrections or transportation to University Hospital under U.S. Marshal supervision. Mr. Neder is reluctant to leave Keeton Facility. Order to Enter for remand to U.S. Marshal for transportation to University Hospital. Court directs deft Smith to be ready for 4/9/92 (est. 6 witnesses) 10:05 a.m. Jury brought in and advised of deft Neder illness and instructed to call the Code a Phone this evening. Trial recessed until 9:30 a.m. 4/9/92.

04/13/92 824 RECORD OF HEARING. Resumption of jury trial. (NEDER (continued from 4/8/92) SMITH,SMITH & ASSOC.&FOGG) Deft Neder's witnesses: Ellis E. Neder, Jr. Deft Deft Neder's exhibits; 105,7,9,12,18,16,24, 27,122, 28,34; filed in evidence. Deft Fogg's supplemental witness list field in open court. Deft Smith's supplemental witness list filed in open court. Argument on deft's exhibit no. 1 - objection overruled, but not yet admitted. Jury dismissed at 4:45 p.m. Trial recessed until 9:00 a.m. 4/14/92

04/14/92 828 RECORD OF HEARING. Resumption of jury trial. 7.0 hrs (continued from 4/13/92) (824) Deft Neder's exhibits; 35, 37, 36, 38, 40, 39, 42, 43, 52, 53, 54, 60, 59, 57, 64, 46, 47, 49, 48, 66, 67, 69 filed in evidence.

Jury excused at 4:35 p.m. Trial recessed until 9:30 4/15/92

04/15/92 830 RECORD OF HEARING: resumption of jury trial HES (continued from 4/14/92) 6.5 Deft Neder's witness: Ellis E. Neder, Jr. (resumption of direct examination) Deft Neder's exhibits: 78,75,73,71,72,70,84, 85,86,87,88,89,90, 77,76,81,83; filed in evidence. Govt's exhibits 471 filed in evidence. Deft Neder's oral motion for mistrial - denied. Trial recessed until 9:25 a.m., 4/16/92 (NEDER,SMITH,SMITH & ASSOC., FOGG)

04/16/92 831 RECORD OF HEARING. resumption of jury trial HES 7.0 Deft Neder's witness: Ellis E. Neder, Jr. (cross examination continued) Deft Neder's Verbal motion for mistrial - denied. Deft Neder's exhibit no.1 filed in evidence. Govt's exhibit lsit 544, filed in evidence. Trial recessed until 9:30 a.m. April 20, 1992.

4/20/92 832 RECORD OF HEARING. resumption of jury trial HES 6.0 Deft Neder announced rest. Deft Smith's witnesses: Martin Williams, Jr., Mary Reynolds, Robert O'Neill, Nancy Zysk, Marvin Boutwell, Frank Lucente, Warren Dentrick, Irwin Goldberg. Govt's exhibits 547 and 548 marked for identification. Deft Smith's exhibit 1 marked for identification. Deft Smith's exhibit 2 marked for identification.- Trial recessed until 9:30 a.m. 4/21/92

04/21/92 835 RECORD OF HEARING: JURY TRIAL RESUMED HES 6.0 Deft. Smith's Witness: John Sulik (NEDER,SMITH,FOGG) The Govt's Notice of Filing amended redacted copy of Indictment, filed in open Court on 4/20/92 Deft. Smith announced rest. Deft's Fogg's witnesses: Eugene Peek, Fernis M. Scurry. Trial recessed until 9:00 a.m., 4/22/92. The Court will tentatively hold a preliminary charge conference on 4/24/92.

04/22/92 836 RECORD OF HEARING. resumption of jury trial. HES 7.0 Deft Fogg's Witness: Timothy Kenneth Wilhort, Peter A. Fogg. Deft Fogg's exhibits nos. 10,11,12,13 & 14, filed in evidence. Deft Fogg rests. All defts verbally renew motions for Judgment of acquittal - Denied. Govt's Rebuttal witness: Thomas E. Turner. Govt's exhibit no. 547, filed in evidence. Trial recessed until 9:30 a.m. 4/23/92 (NEDER,SMITH, FOGG)

04/23/92 839 RECORD OF HEARING. resumption of jury trial (contin'd from 4/22/92) (NEDER, SMITH, FOGG) Govt rebuttal witness: Thomas E. Turner continued. Deft Neder's exhibits no. 63, filed in evidence and published to jury together with Court's exhibit No. 2, by counsel for deft Fogg. Jurors excused until 9:00 a.m. April 27, 1992. Trial recessed until 9:30 a.m. April 24, 1992.

04/24/92 840 RECORD OF HEARING: resumption of jury trial (continued from 4/23/92) (NEDER,

SMITH, FOGG) Conference held with Counsel on Jury Instructions. Jury is not present this date. Trial recessed until 4/27/92 at 9:00 a.m. HES 2.0

04/27/92 842 RECORD OF HEARING: resumption of jury trial (continued from 4/24/92 HES 6.0 (NEDER, SMITH & FOGG) Govt's Rebuttal witnesses: Linda Alexon, David Phillips, Charles Rogers/Witnesses Alexon, Phillips and Rogers - recalled) Lawrence C. Evans, Robert E. Johnson, Mary W. Coleman, Carolyn J. Murphy - recalled, Harris Johnson. Govt's exhibits nos. 551,553,548,549 and 554, filed in evidence. Deft Neder's exhibits nos. 134, filed in evidence (out of order) Govt rests rebuttal. Court deems all Rule 29 Motions renewed - same ruling applicable on motions as previously made.3:35 p.m. Jury excused to return at 9:00 a.m. on 4/28/92. Court and Counsel confer, re: jury instructions. 4:05 p.m. Court adjourned. Arguments of counsle will commence at 9:00 a.m. 4/28/92

04/28/92 844 RECORD OF HEARING. resumption of jury trial. HES 7.0 (continued from 4/27/92) (NEDER, SMITH & FOGG) Govt's initial closing argument. Deft Neder's closing argument. Upon stipulation of counsel a copy of deft Neder's exhibit No. 76 is substituted for the original, which was misplaced. Trial recessed until 9:00 4/29/92

04/29/92 845 RECORD OF HEARING. resumption of jury trial HES 7.5 (continued from 4/28/92) (NEDER, SMITH & FOGG) Deft Smith closing argument. Deft Fogg closing argument. Govt rebuttal. Court charges the jury. Jurors commence deliberation; with the exception of Alternate Jurors nos. 172, 92, 36 and 241 who are excused - to be contacted when the Jury has been discharged. Court instructs counsel to remain until 5:00 p.m. Phone numbers for counsel are given to the Clerk. Court received request (written) for Exhibit Lists for the Jurors. Deft Fogg and Smith object. Written Request filed as Court's exhibit no. 4. Jurors' request denied. Because of counsel descriptions on lists, it would not be advisable for them to use the lists for deliberations. Court excuses Jury for the day. Court to resume at 9:00 a.m. 4/30/92.

04/30/92 847 RECORD OF HEARING. resumption of jury trial. HES .5 (continued from 4/29/92) 9:00 - 9:05 court and counsel present - Jurors report in open court - Court directs jurors to resume their deliberation. 12:40 p.m. Jury question received, Court and Counsel Confer - Court responds to jury question. 12:50 p.m. 12:50 p.m. Luncheon meal catered to the jury by Court Security Office. 4:00 p.m. Note received from Jury requesting to be adjorned by 5;00 p.m. this date (Court's exhibit no. 7) 5:00 p.m., Jurors assembled in Courtroom with defts and counsel. Jurors excused until 9:00a.m.

May 1, 1992. (Note Mr. McLoughlin appears after Jury is excused) 5:10 p.m. Trial recessed until 9:00 a.m. May 1, 1992.

05/01/92 848 RECORD OF HEARING. resumption of jury trial HES (continued from 4/30/92) 1.0 hrs 9:00 a.m. court and Counsel present - Jurors report into open court - Court directs jurors to resume their deliberation. 9:10 a.m. 12:30 p.m. Luncheon meal catered to the jury by the Court Security Officer. 3:20 p.m. VERDICT as to the deft Ellis E. Neder, Jr. GUILTY on Counts 1 through 12, NOT GUILTY on Counts 13 through 20, GUILTY on Counts 21 through 23, GUILTY on Counts 26 through 28, GUILTY on Counts 30 through 72, GUILTY on Count 77 through 84 and GUILTY on Counts 86 through 90. (NEDER) VERDICT as to Defts (SMITH and SMITH & ASSOC) NOT GUILTY on Counts 1,7,8,13,14,15,18,19,21,22,27,28, 31,32,89 and 90. VERDICT as to deft. (FOGG) NOT GUILTY on Counts 1,7,8, 13,14,15,18,19,21,22,27,28,31,32, 89 and 90. Jury polled as to each verdict as published. Court sets forfeiture proceedigns as to the deft NEDER on Thursday, May 7, 1992 at 9:00 a.m. Defts Smith, Smith & Associates and Fogg ordered discharged and defts Bonds ordered exonerated. Jurors excused to return on Thursday, May 7, 1992 at 9:00 a.m. Court directs that alternate jurors be called to return for forfeiture proceedings. Govt moves orally for the deft

Neder's remand to the Marshal's custody pending further proceedings. Argument by counsel. Govt's motion to remand Deft Neder to Marshal's custody - GRANTED. Court adjudges the deft Neder guilty based on the verdict and remands him to custody. Court refers the case for pre-sentence investigation to the Probation Office, Mr. Fred Fortenberry. Sentencing for deft Neder set for July 17, 1992 at 2:00 p.m. 4:00 p.m. Court adjorned.

05/01/92 849 VERDICT FORM filed in open court. (848) (NEDER)

05/06/92 853 JUDGMENT: The Jury having returned a VERDICT (NEDER) of NOT GUILTY on some of the counts of the Indictment, counts numbered 13 through 20. IT IS ORDERED that deft, Ellis E. Neder, Jr., be discharged and allowed to go hence without day as to counts 13 through 20, some of the counts charged in the Indictment. s/HES (parties notified) MR 121/0163

05/07/92 876 REDACTED INDICTMENT, filed in open Court.

05/07/92 877 COURT's INSTRUCTIONS TO THE JURY, filed in open Court.

05/26/92 897 JUDGMENT AND ORDER OF FORFEITURE. Deft ELLIS E. NEDER JR. is liable to the U.S. for the amount of $31,636,083.39 which monies are hereby forfeited pursuant to 18 U.S.C. §1963(a)(3) to the U.S.A. for its full use and benefit as

proceeds the deft obtained directly or indirectly from racketeering activities in violation of 18 U.S.C. §1962. s/HES in Orlando this 26th day of May, 1962 nunc pro tunc to May 7, 1992. (parties notified) MR 121/0458

09/08/92 1008 RECORD OF HEARING. SENTENCING IN OPEN COURT. HES

09/08/92 1009 RESPONSE to Pre-Sentencing Report of 7/1/92; by deft Arguments on Contested issues in PSI Report. Court's findings on contested issues are as announced in open court. Court's exhibit no. 1 marked for identification. Deft is adjudged GUILTY on each of Counts 1 through 12, 21 through 72, 77, 78 through 84, 86, 87, 89 & 90 upon the jury verdict. SENTENCE ON GUIDELINE COUNTS: 5 Yrs. Imprisonment on each of counts 1,77,80,81,82, 83 & 84 - concurrently.; 3 Years imprisonment on each of counts 86 and 87, concurrent with each other and with sentence on Cts. 1, 77, 80, 81, 82, 83 and 84; 7 years and 3 mos. imprisonment on each count 89 and 90 to run concurrently with each other and concurrently with sentences on Counts 1, 77, 80, 81, 82, 83, 84, 86 & 87. SENTENCE ON NON-GUIDELINES COUNTS: 5 Years imprisonment on each of Counts 2 through 12, 21 through 72, 78 and 79, to run concurrently with each other and consecutive to the sentences imposed on counts 1, 77, 80, 81, 82, 83, 84, 86 and 87. TOTAL SENTENCE OF CONFINEMENT; 12

		YEARS and 3 MONTHS IMPRISONMENT. Pay Restitution: 1) $402,577.00 Carteret S & L; 2) $2,300,000.00 Amerifirst Fed. S & L.; 3) $1,300,000.00 Greyhound Leasing & Financial Corp.; 4) $1,778,419.00 Factimore Federal Savings; 5) $3,100,000.00 Security First Federal S & L.; 6) $10,265,000.00 United Brotherhood of Carpenters & Joiners of America; and 7) $5,900,000.00 Caribank TOTAL RESTITUTION: $25,045,996.00 due immediately
09/08/92	1008	RECORD OF HEARING. SENTENCING. CONTINUED (NEDER) SUPERVISED RELEASE: 5 years on each of counts 1, 77, 80 through 84, 86, 87, 89 and 90 upon Standards of Middle District of Florida and following SPECIAL CONDITIONS: 1. Pay unpaid balance of Restitution upon Release from Confinement. 2. Prohibited from incurring new credit charges, opening new lines of credit or obligating for major purchases without approval of P.O. in compliance with payment schedule. 3. Provide P.O. Requested financial information; and 4. Prohibited from engaging in employment related to Real Estate Development. SPECIAL ASSESSMENT: $3,800.00 due immediately Court recommends Commitment in Federal Institution at Jesup, Georgia. Remanded to U.S. Marshal. Appeal Information supplied in Open court.

10/31/95	--	RECORD ON APPEAL transmitted to USCA as to Ellis E. Neder Jr.: (ROA will consist of: PSI, 7 vol. pleadings; 9 boxes vol. exhibits; 46 vol. transcript.) (dgj) [Entry date 10/31/95]
1/18/96	--	RECORD ON APPEAL transmitted to USCA as to Ellis E.e 01/18/96]
2/28/96	--	SUPPLEMENTAL RECORD ON APPEAL transmitted to USCA as to Ellis E. Neder Jr.: (ROA will consist of: PSI, 1 vol. transcript.) (dgj) [Entry date 02/28/96]

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA

v.

ELLIS E. NEDER, JR.

No. 92-2929

RELEVANT DOCKET ENTRIES

09/21/92	District Court Order
09/30/92	Probable Jurisdiction Noted
01/27/94	Brief for Appellant
10/16/95	Brief for Appellee
12/28/95	Reply Brief for Appellant
02/27/96	Supplemental Brief for Appellant
07/18/97	Supplemental Brief for Appellant
10/10/97	Supplemental Brief for Appellee
10/10/97	Supplemental Reply Brief
01/13/98	Case Argued
03/19/98	Opinion Issued in Manuscript Form
03/19/98	Judgment Entered
04/23/98	Petition for Rehearing
06/08/98	Order Denying Rehearing
06/12/98	Notice of filing cert. on 6/9/98
06/18/98	Judgment and Opinion issued to Clerk as Mandate

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

UNITED STATES OF AMERICA v. ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH STEVEN A. MOORE HARVEY M. MANSS WILLIAM THOMAS FREEMAN, JR. JANET S. KING SANDRA McDANIEL MARY C. MILLIS MICHAEL J. ARINGTON ROY F. SMITH, JR. ROY F. SMITH, JR. & ASSOCIATES, INC. PETER A. FOGG	Case No.		91-175-CR-J-16
	Ct.	1	18 U.S.C. §371 (5 yrs/$250,000/both)
	Cts.	2-12, 73,77	18 U.S.C. §1344, 2 (5 yrs/$250,000/both)
	Cts.	13-20, 36-72 74-76	18 U.S.C. §1014, 2 (2 yrs/$250,000/both)
	Cts.	21-30, 34-35	18 U.S.C. §1341, 2 (5 yrs/$250,000/both)
	Cts.	31-33, 78-84	18 U.S.C. §1343, 2 (5 yrs/$250,000/both)
	Ct.	85	18 U.S.C. §1621 (5 yrs/$250,000/both)
	Cts.	86-88	26 U.S.C. §7206(1) (3 yrs/$250,000/both plus costs of prosecution)
	Ct.	89	18 U.S.C. §1962(c), 2 (20 yrs/$250,000/both)
	Ct.	90	18 U.S.C. §1962(d) (20 yrs/$250,000/both)

INDICTMENT

The Grand Jury charges:

COUNT ONE

A. INTRODUCTION

At all times material to this Indictment:

1. ELLIS E. NEDER, JR. was a Jacksonville attorney who engaged in various real estate developments utilizing a corporation known as Neder Properties, Inc., incorporated under Florida law. ELLIS E. NEDER, JR. purchased various parcels of real property as a director, officer, or acting on behalf of the following corporations:

a. First Frontier, Inc., a corporation registered under the laws of the State of Florida.

b. JBA, Inc., a corporation registered under the laws of the State of Florida.

c. AMH, Inc., a corporation registered under the laws of the State of Florida.

d. First Prospector, Inc., a corporation registered under the laws of the State of Florida.

2. ELLIS E. NEDER, JR. caused the creation of the following corporations and the transfer of various parcels of real property from the corporations cited in number 1 above and the following corporations to ELLIS E. NEDER, JR. or a partnership involving ELLIS E. NEDER, JR.:

a. Islands of San Sebastian, Inc., a corporation registered under the laws of the State of Florida.

b. T.E.A.E., Inc., a corporation registered under the laws of the State of Florida.

c. Pt. Reddie, Inc., a corporation registered under the laws of the State of Florida.

d. RBB, Inc., a corporation registered under the laws of the State of Florida.

e. Reddie Point, Ltd., a partnership registered under the laws of the State of Florida.

3. ELLIS E. NEDER, JR., THOMAS C. TURNER, and STEVEN A. MOORE, created a corporation, E.A.T. Investors Equity, Inc., registered under the laws of the State of Florida, to secretly provide funds for individuals to place deposits for purchase and sale contracts for a condominium project known as Southern Grove.

4. ELLIS E. NEDER, JR. utilized a corporation, Management Constructors, Inc., registered under the laws of the State of Florida, as a general contractor for the construction loan obtained from the United Brotherhood of Carpenters and Joiners of America for the project known as Reddie Point.

5. ELLIS E. NEDER, JR. utilized a corporation, The View, Inc., registered under the laws of the State of Florida, to attempt to obtain a multimillion dollar land development loan for a project known as The View.

6. ELLIS E. NEDER, JR. acquired the following parcels of real property and sought to develop those properties under the following project names:

a. One parcel of real property, approximately 4 acres, located in Duval County, Florida known as Rose Creek.

b. Two parcels of real property, approximately 4 acres and 1.15 acres, located in Duval County, Florida known as Cedar Creek.

c. Two parcels of real property, approximately 14.7 acres and 9.8 acres, located in Duval County, Florida known as Southern Grove.

d. Four parcels of real property, totalling approximately 16 acres, located in Duval County, Florida, known as River Creek.

e. Two parcels of real property, approximately 10.5 acres and 2.2 acres, located in St. Johns County, Florida, known as Beach Harbour.

f. One parcel of real property, approximately 10 acres, located in St. Johns County, Florida, known as Players Place or The View.

g. One parcel of real property, approximately 39 acres, located in St. Johns County, Florida, known as Islands of San Sebastian.

h. One parcel of real property, approximately 285 acres, located in St. Johns County, Florida, known as Flagler Landing or Stokes Landing.

i. Three parcels of real property, totalling approximately 38 acres, located in Duval County, Florida, known as Belle Rive or L'Hermitage.

j. One parcel of real property, approximately 117 acres, located in Duval County, Florida, known as Reddie Point.

7. THOMAS C. TURNER was a Jacksonville attorney who handled the closings of various real properties purchased by ELLIS E. NEDER, JR., his corporations, and partnerships. THOMAS C. TURNER was also an agent for various title insurance companies that provided title insurance in the various real estate transactions involving ELLIS E. NEDER, JR. THOMAS C. TURNER was also the developer

of real property in St. Johns County, Florida known as Mallard Landing and obtained land acquisition and land development financing through his relationship with ELLIS E. NEDER, JR.

8. TURNER AND FORD, P.A. was a law firm registered as a professional service corporation under the laws of the State of Florida and its President was THOMAS C. TURNER. Attorney fees and title insurance fees received from ELLIS E. NEDER, JR. were deposited into a bank account of TURNER AND FORD, P.A.

9. HORACE MARSH was the incorporator, director, and officer of many corporations that purchased real property on behalf of ELLIS E. NEDER, JR. and transferred the same real property to ELLIS E. NEDER, JR. or his partnerships at inflated prices. HORACE MARSH signed various purchase and sale contracts, warranty deeds, and loan settlement statements and authorized disbursement of loan proceed monies to ELLIS E. NEDER, JR. instead of the corporations.

10. STEVEN A MOORE was the president of Neder Properties, Inc. and assisted ELLIS E. NEDER, JR. in the development of various properties.

11. HARVEY M. MANSS was an architect licensed under the laws of the State of Florida and was the architect hired by NEDER for the Southern Grove and Reddie Point projects.

12. WILLIAM THOMAS FREEMAN, JR. was a contractor licensed under the laws of the State of Florida and was the construction manager for Management Constructors, Inc., which was the general contractor for the construction loan obtained from the United Brotherhood of Carpenters and Joiners of America for the Reddie Point project.

13. JANET S. KING was the marketing director for Neder Properties, Inc. and solicited purchase and sale contracts and reservation agreements for condominium projects developed by Neder Properties, Inc.

14. SANDRA McDANIEL was a realtor who assisted ELLIS E. NEDER, JR. in the acquisition and development of some real properties. McDANIEL solicited purchase and sale contracts and reservation agreements for condominium projects developed by ELLIS E. NEDER, JR.

15. MARY C. MILLIS was a realtor associate who assisted ELLIS E. NEDER, JR. in the acquisition of real properties. MILLIS also executed, in her maiden name, various corporation documents on behalf of ELLIS E. NEDER, JR.

16. MICHAEL J. ARINGTON was a Jacksonville attorney and an associate of ELLIS E. NEDER, JR. MICHAEL J. ARINGTON assisted ELLIS E. NEDER, JR. in the development of condominium projects and executed a reservation agreement and purchase and sale contract with deposit money provided by ELLIS E. NEDER, JR.

17. ROY F. SMITH, JR. was an appraiser, licensed by the State of Florida, who provided and certified inflated appraisals of properties known as Cedar Creek, River Creek, San Sebastian, The View, and L'Hermitage for ELLIS E. NEDER, JR. to submit to financial institutions and other lenders in support of land acquisition loan applications of ELLIS E. NEDER, JR. and his partnerships.

18. ROY F. SMITH, JR. AND ASSOCIATES, INC. was a real estate appraisal firm that was a corporation registered under the laws of the State of Florida. ROY F. SMITH, JR. was its president. The corporation received fees

from ELLIS E. NEDER, JR. for inflated appraisals performed by its employees or officers.

19. PETER A. FOGG was employed as a staff appraiser by ROY F. SMITH, JR. AND ASSOCIATES, INC. and produced the inflated appraisals for real properties known as Cedar Creek, River Creek, San Sebastian, The View, and L'Hermitage. PETER A. FOGG received 40% of the fees paid to ROY F. SMITH, JR. AND ASSOCIATES, INC. by ELLIS E. NEDER, JR. for the appraisals.

20. The following lenders loaned or agreed to loan sums of money to ELLIS E. NEDER, JR. or his partnerships:

a. Financial institutions whose accounts and deposits were insured by the Federal Deposit Insurance corporation:

1. Caribank, 848 Brickell Avenue, Miami, Florida.

2. Central Bank of the South, Birmingham, Alabama, hereinafter referred to as "Central Bank".

b. Financial institutions whose accounts and deposits were insured by the Federal Savings and Loan Insurance Corporation:

1. Jacksonville Federal Savings and Loan Association, Jacksonville, Florida, hereinafter referred to as "Jacksonville Federal S & L".

2. Duval Federal Savings and Loan Association, Jacksonville, Florida, hereinafter referred to as "Duval Federal S & L".

3. Amerifirst Federal Savings and Loan Association, Maitland, Florida, hereinafter referred to as "Amerifirst S & L".

4. Security First Federal Savings and Loan Association, 501 North Grandview Avenue, Daytona Beach, Florida, hereinafter referred to a "Security First S & L".

5. Financial Federal Savings and Loan Association, 6625 Miami Lakes Drive, Miami, Florida, hereinafter referred to as "Financial Federal S & L".

6. Baltimore Federal Savings, Baltimore, Maryland, hereinafter referred to as "Baltimore Federal".

7. Carteret Savings and Loan Association, F.A., 200 East Palmetto Park Road, Boca Raton, Florida, hereinafter referred to as "Carteret S & L".

c. Other lenders:

1. Greyhound Leasing & Financial Corporation, Phoenix, Arizona, hereinafter referred to as "Greyhound".

2. Bancsmiths Mortgage Corporation, 1307 U.S. 19 South, Clearwater, Florida, hereinafter referred to as "Bancsmiths".

3. United Brotherhood of Carpenters and Joiners of America, 101 Constitution Avenue, Washington, D.C., hereinafter referred to as the "Union".

B. CHARGE

From in or about May 1984, through in or about May 1988, at Jacksonville, in the Middle District of Florida, and elsewhere,

ELLIS E. NEDER
THOMAS C. TURNER
TURNER AND FORD, P.A.
HORACE MARSH
STEVEN A. MOORE
HARVEY M. MANSS
WILLIAM THOMAS FREEMAN, JR.
JANET S. KING
SANDRA McDANIEL
MARY C. MILLIS
MICHAEL J. ARINGTON
ROY F. SMITH, JR.
ROY F. SMITH, JR. & ASSOCIATES, INC.
PETER A. FOGG

the defendants herein, did knowingly and willfully conspire, combine, confederate and agree with each other, and with others known and unknown to the grand jury, to commit offenses against the United States, that is:

1. To execute and attempt to execute a scheme and artifice to defraud, and to obtain, by false and fraudulent pretenses, representations and promises, moneys owned by and under the custody and control of federally insured financial institutions, in violation of Title 18, United States Code, Section 1344.

2. To make materially false statements to federally insured financial institutions, in violation of Title 18, United States Code, Section 1014.

3. To transmit by means of wire communications in interstate commerce writings, signals, pictures, and sounds for the purpose of executing a scheme and artifice to defraud, and to obtain money by false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1343.

C. WAYS AND MEANS

The ways and means by which the conspiracy was carried out included the following:

I. LAND ACQUISITION FRAUD

1. It was part of the conspiracy that ELLIS E. NEDER, JR. would contract to purchase real property through a corporation at a specific price.

2. It was further part of the conspiracy that the defendants would cause to be executed a new purchase and sale agreement transferring the same real property from a corporation to ELLIS E. NEDER, JR. or his partnerships at an inflated purchase price.

3. It was further part of the conspiracy that the defendants would obtain an inflated appraisal on the real property and submit said appraisal to a lender to obtain a loan.

4. It was further part of the conspiracy that the purchase and sale agreement between the corporation and ELLIS E. NEDER, JR. would contain the false representation that ELLIS E. NEDER, JR. had placed a deposit of money for the purchase of the property with the corporation.

5. It was further part of the conspiracy that the defendants would submit the purchase and sale agreement between the corporation and ELLIS E. NEDER, JR. to a lender to obtain a land acquisition loan for said real property.

6. It was further part of the conspiracy that the defendants would conceal from the lender that ELLIS E. NEDER, JR. had contracted, through a corporation, to purchase the real property at a lower purchase price than represented to the lender.

7. It was further part of the conspiracy that the defendants would conceal from the lender that ELLIS E. NEDER, JR. had an interest in the corporation from which he was purchasing the real property.

8. It was further part of the conspiracy that THOMAS C. TURNER would act as the title agent, attorney for the seller and buyer, and attend all real estate transaction closings involving ELLIS E. NEDER, JR.

9. It was further part of the conspiracy that THOMAS C. TURNER would be an agent of a title insurance company which would provide title insurance for specific real estate transactions involving ELLIS E. NEDER, JR.

10. It was further part of the conspiracy that THOMAS C. TURNER, in violation of his title agency obligation, would not advise the title insurance company that the real estate transactions involved transfers of property from a corporation to an officer, director, or other insider of the corporation.

11. It was further part of the conspiracy that THOMAS C. TURNER would conceal from the lender that in the various real estate transactions he represented both the seller corporation, as its attorney, and the buyer, ELLIS E. NEDER, JR., or one of his partnerships, and further would not disclose that a relationship existed between the corporation and ELLIS E. NEDER, JR., or one of his partnerships.

12. It was further part of the conspiracy that the loan proceeds would be wired from the lender to the trust

account of THOMAS C. TURNER who would then disburse to ELLIS E. NEDER, JR. the portion of loan proceeds due and owing to the corporation.

13. It was further part of the conspiracy that the defendants would conceal from the lender that the loan proceeds that were to be provided to the corporation for the sale of the real property at closing of the real estate transaction were instead given by THOMAS C. TURNER to ELLIS E. NEDER, JR.

II. LAND DEVELOPMENT FRAUD

14. It was further part of the conspiracy that the defendants would submit applications to lenders to obtain land development loans for various parcels of real property.

15. It was further part of the conspiracy that the defendants would submit condominium reservation agreements to certain financial institutions as a condition of securing land development loans.

16. It was further part of the conspiracy that the defendants would cause individuals to sign condominium reservation agreements that contained false representations that the individuals had placed a $500 deposit with an escrow agent for the purchase of a condominium when in fact the $500 had not been so provided by the individuals.

17. It was further part of the conspiracy that the defendants would submit the condominium reservation agreements for the development at Southern Grove to a financial institution, falsely representing them to be agreements from bona fide purchasers who had each placed a $500 deposit with an escrow agent.

18. It was further part of the conspiracy that the defendants would submit to the financial institution some

condominium reservation agreements that contained forged signatures.

19. It was further part of the scheme and artifice that the defendants would fraudulently conceal from and not disclose to Security First Federal S & L that they had provided the $500 deposits for the individuals who had signed the "condominium reservation agreements".

20. It was further part of the conspiracy that the defendants would have individuals sign purchase and sale contracts for condominiums at his projects which contained false representations that the purchasers had deposited 10% of the purchase price at the time of the execution of the contracts with ELLIS E. NEDER, JR.

21. It was further part of the conspiracy that the defendants would submit said purchase and sale contracts to financial institutions for the purpose of obtaining financing on his projects and would fraudulently conceal from and not disclose to said financial institutions that he, rather than the alleged purchasers, had provided the 10% deposit for the purchase and sale contracts, and further concealed and did not disclose that certain of the alleged purchasers were not bona fide.

22. It was further part of the conspiracy that the defendants would create trust mortgage documents and utilize these documents as existing mortgages on real property to be paid by lenders who were providing the defendants land development loans.

III. CONSTRUCTION DRAW REQUESTS FRAUD

23. It was a part of the scheme and artifice that the defendants would submit and cause to be submitted to the Union to obtain construction loan proceeds for a project known as Reddie Point, false and fraudulent requisitions, draw

requests, and supporting documentation, which contained costs, expenses, and charges of vendors for projects other than Reddie Point and for work never performed.

24. It was further part of the scheme and artifice that ELLIS E. NEDER, JR. would sign a document entitled "form of Requisition" falsely certifying that the amount of expenses detailed were legitimate expenses incurred by the defendants on the Reddie Point project.

25. It was further part of the scheme and artifice that HARVEY M. MANNS, architect on the Reddie Point project, would approve the requisitions and draw requests, falsely certify that the itemized list of invoices and back-up data were in accordance with accepted standards of the architectural profession and reasonable, and submit said certification of the architect to the Union as part of the requisition and draw requests to obtain construction loan proceeds for the Reddie Point project.

26. It was further part of the scheme and artifice that WILLIAM THOMAS FREEMAN, JR., construction manager for the Reddie Point project, would sign and approve a Management Constructor's, Inc. "Construction Management Invoice" falsely detailing services and costs of vendors at the Reddie Point project for submission of said invoice to the Union as part of the requisitions and draw requests to obtain construction loan proceeds.

27. It was further part of the scheme and artifice that HARVEY M. MANSS would submit to the Union letters approving and recommending payment of draw requests of Management Constructor's, Inc.

28. It was further part of the scheme and artifice that STEVEN A. MOORE would solicit invoices from vendors who had performed services on other NEDER projects

and cause those invoices to be submitted to the Union as part of the draw requests for the Reddie Point project.

29. It was further part of the scheme and artifice that the defendants would receive construction loan proceeds via wire transmissions from an account of the Union in Indianapolis, Indiana, wired to the account of Reddie Point, Ltd. at Tucker State Bank of Jacksonville, Florida.

30. It was further part of the conspiracy that the defendants would utilize construction loan proceeds obtained from the Union, without the knowledge and authorization of the Union, to pay various fees in connection with land development loans from other lenders unconnected to the Reddie Point project.

IV. CONCEALMENT

31. It was further part of the conspiracy that the defendants would perform acts and make statements to hide and conceal, and cause to be hidden and concealed, the purpose of the conspiracy and the acts committed in furtherance thereof.

D. OVERT ACTS

In furtherance of this conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed at Jacksonville in the Middle District of Florida, unless otherwise specified, and elsewhere:

1. On or about May 30, 1984, ELLIS E. NEDER, JR., through a partnership known as Rose Creek Associates, Limited, borrowed $102,000 from Jacksonville Federal S & L for land acquisition of property known as Rose Creek from JBA, Inc.

2. On or about May 30, 1984, HORACE MARSH authorized THOMAS C. TURNER to receive and accept the net proceeds check from the closing of the sale of

property from JBA, Inc. to NEDER and to execute closing documents.

3. On or about May 30, 1984, THOMAS C. TURNER signed, on behalf of JBA, Inc. a loan settlement statement relating to a $102,000 loan from Jacksonville Federal S & L to Rose Creek Associates, Limited, a partnership of ELLIS E. NEDER, JR., to purchase property from JBA, Inc.

4. On or about August 15, 1984, ELLIS E. NEDER, JR. signed a purchase and sale contract on behalf of JBA, Inc. purchasing approximately four acres of real property for the price of $177,000.

5. On or about August 16, 1984, ELLIS E. NEDER, JR. sent a letter to Duval Federal S & L representing that he had purchased the property described in overt act number 4 for the fair market price of $390,000 and that he had placed $97,500 down as a deposit on the purchase of the property.

6. On or about August 20, 1984, HORACE MARSH signed a $390,000 purchase and sale agreement as President of JBA, Inc. with ELLIS E. NEDER, JR. concerning approximately four acres of real property and falsely acknowledged receipt of $97,500 deposit from ELLIS E. NEDER, JR.

7. On or about August 25, 1984, ROY F. SMITH, JR. and PETER A. FOGG appraised the property described in overt act number 4 at $390,000, fair market value.

8. On or about August 30, 1984, ELLIS E. NEDER, JR. obtained a loan in the amount of $273,000 from the Duval Federal S & L of Jacksonville for land acquisition for the property described in overt act number 4 and received a bank cashier's check payable to JBA, Inc. for that amount.

9. On or about August 30, 1984, HORACE MARSH endorsed the $273,000 bank cashier's check from Duval Federal S & L payable to JBA, Inc. and provided the check to ELLIS E. NEDER, JR.

10. On or about August 30, 1984, ELLIS E. NEDER, JR. endorsed the $273,000 bank cashier's check from Duval Federal S & L payable to JBA, Inc., deposited it into his trust account, issued a $165,000 check to the original sellers of the property, and then retained $108,000.

11. On or about November 2, 1984, AMH, Inc. was incorporated in the State of Florida. HORACE MARSH was designated in the Articles of Incorporation as the director of the corporation.

12. On or about November 2, 1984, HORACE MARSH filed minutes of an Organizational Meeting of the Board of Directors of AMH, Inc., signed the minutes as Secretary of the corporation, and approved the minutes as Chairman. HORACE MARSH named himself President, Secretary, and Treasurer of the corporation and issued 100 shares of common stock of AMH, Inc. to himself.

13. On or about November 9, 1984, HORACE MARSH signed a purchase and sale contract on behalf of AMH, Inc. in the amount of $1,168,650 and agreed to transfer approximately 14.7 acres of real property in Duval County in the purchase and sale contract to ELLIS E. NEDER, JR. In the contract, HORACE MARSH falsely acknowledged receipt from ELLIS E. NEDER, JR. of $350,595 as a deposit for the purchase of the real property.

14. On or about November 26, 1984, ELLIS E. NEDER, JR. obtained an appraisal of the real property described in overt act number 15 which stated that the fair market value of the property was $1,175,000.

15. On or about December 12, 1984, ELLIS E. NEDER, JR. signed a purchase and sale agreement for the same property referred to in overt act number 13 on behalf of AMH, Inc. for the price of $514,500.

16. On or about January 15, 1985, Security First S & L loaned $822,500 to Southern Grove Limited, a partnership of ELLIS E. NEDER, JR., for the land acquisition of the property referred to in overt acts number 13 and 15.

17. On or about January 15, 1985, THOMAS C. TURNER, received the land acquisition loan proceeds from Security First S & L, and disbursed $303,534 of those loan proceeds to AMH, Inc. by providing a check, payable to the corporation, to ELLIS E. NEDER, JR., who endorsed and deposited the check into his personal bank account.

18. On or about January 15, 1985, THOMAS C. TURNER, issued a check from the loan proceeds of Security First S & L in the amount of $140,238 to ELLIS E. NEDER, JR. as a reimbursement for 40% of the deposit that NEDER falsely claimed he had placed down on the purchase of the property on November 9, 1984.

19. On or about January 15, 1985, HORACE MARSH signed a settlement statement on behalf of AMH, Inc. as the seller in the real estate transaction referred to in overt acts 13 through 18 acknowledging a loan from Security First S & L to a partnership of ELLIS E. NEDER, JR. of $822,500 which was utilized to purchase the property at the price of $1,168,650, receiving the balance from the loan proceeds on behalf of the corporation, and the issuance of monies as reimbursement of the deposit to ELLIS E. NEDER, JR.

20. On or about January 25, 1985, THOMAS C. TURNER sent a letter to ELLIS E. NEDER, JR. with documents attached to change officers and directors for AMH,

Inc. and First Prospector, Inc. In the letter, THOMAS C. TURNER requested that NEDER and MARSH execute the documents.

21. On or about March 14, 1985, ELLIS E. NEDER, JR. agreed to purchase four parcels of real property and signed purchase and sale agreements as a Vice President of a corporation known as First Prospector, Inc. The total purchase price of the contracts was $658,000.

22. On or about April 5, 1985, ROY F. SMITH, JR. and PETER A. FOGG appraised the property described in overt act number 21 at $1,780,000, fair market value.

23. On or about June 18, 1985, HORACE MARSH executed a warranty deed as President of First Prospector, Inc. transferring the property referred to in overt act 21 to River Creek Landing, Ltd., a partnership of ELLIS E. NEDER, JR. The documentary stamps affixed to the deed reflected a purchase price of $1,780,000.

24. On or about June 18, 1985, Baltimore Federal, Baltimore, Maryland wired $1,186,750 to the account of Bancsmiths Mortgage Corporation, Tampa, Florida, which wired monies to Jacksonville for THOMAS C. TURNER to disburse at the real estate closing of property known as River Creek.

25. On or about June 18, 1985, THOMAS C. TURNER issued a check in the amount of $432,689.68 payable to First Prospector, Inc. from the loan proceeds referred to in overt act number 24 and provided the corporate check to ELLIS E. NEDER, JR. who endorsed the check and deposited the check into his personal bank account.

26. On or about June 18, 1985, HORACE MARSH signed a settlement statement on behalf of First

Prospector, Inc. with respect to a real estate transaction for property known as River Creek and authorized THOMAS C. TURNER to pay all closing proceeds due to the corporate seller to ELLIS E. NEDER, JR.

27. On or about June 20, 1985, JANET S. KING signed the name of Dale Moehle to a "Deposit Receipt and Purchase and Sale Agreement" which falsely represented that Dale Moehle had agreed to purchase a condominium at a project known as Cedar Creek and had deposited $7,100 at the execution of the agreement, which agreement was submitted by ELLIS E. NEDER, JR. to AmeriFirst S & L.

28. On or about July 21, 1985, JANET S. KING provided to ELLIS E. NEDER, JR. for submission to Security First S & L a condominium reservation agreement in the name of John Para that falsely represented that John Para had deposited $500 with an escrow agent for the purchase of a condominium at a project known as Southern Grove.

29. On or about August 16, 1985, JANET S. KING provided to an appraiser who was preparing an appraisal of the development at Southern Grove which was to be submitted to Security First S & L a list of Southern Grove condominiums "sales to date" that included fictitious condominium sales and falsely stated $500 deposits had been made on the purchases of condominiums.

30. On or about September 6, 1985, JANET S. KING caused to be delivered to a representative of Security First S & L an appraisal conducted for the development of Southern Grove in support of a construction loan request of ELLIS E. NEDER, JR. in the amount of $5.4 million.

31. On or about April 7, 1986, JANET S. KING maintained at Neder Properties, Inc. a document entitled Southern Grove Reservations that recorded a list of

condominium reservations for the project known as Southern Grove and identified many of the reservations as "fake".

32. On or about July 1, 1985, at St. Johns County, Florida, ELLIS E. NEDER agreed to purchase approximately 9.7 acres of real property in St. Johns County for $600,000 and signed a purchase and sale agreement as President of First Frontier Corporation.

33. On or about August 1, 1985, HORACE MARSH signed a $1,500,000 purchase and sale agreement as president of First Frontier Corporation selling real property in St. Johns County to ELLIS E. NEDER, JR. and falsely acknowledged receipt in the agreement of $500,000 deposit from ELLIS E. NEDER, JR. for the purchase of that property.

34. On or about August 10, 1985, Earl B. Miller appraised the real property described in overt act number 32 at $1,500,000, fair market value.

35. On or about October 25, 1985, THOMAS C. TURNER sent a letter to the bona fide sellers of real property in St. Johns County described in overt act number 32 stating that his law firm represented First Frontier Corporation and requesting that they sign various legal documents.

36. On or about October 31, 1985, Caribank loaned $1,125,000 to Beach Harbour, Ltd., a partnership of ELLIS E. NEDER, JR., for the land acquisition of property referred to in overt act number 32. This money was wired to THOMAS C. TURNER as attorney for ELLIS E. NEDER, JR.

37. On or about October 31, 1985, THOMAS C. TURNER caused to be issued a check to TURNER AND FORD, P.A. in the amount of $29,000 from the Caribank loan proceeds for attorney fees.

38. On or about October 31, 1985, THOMAS C. TURNER, Esquire, issued a check to First Frontier Corporation in the amount of $347,646.45 representing monies due to the corporate seller from the loan proceeds of Caribank and TURNER provided this check to ELLIS E. NEDER, JR. who endorsed the check and deposited it into his personal bank account.

39. On or about October 31, 1985, at St. Augustine, Florida, THOMAS C. TURNER issued real estate broker checks to Sunshine Reality Corporation and Neder Properties, Inc. ELLIS E. NEDER, JR. provided the Neder Properties, Inc. check to MARY C. MILLIS and a check received by Neder from Sunshine Reality Corporation was given by NEDER to MARY C. MILLIS representing real estate fees for the sale of the property described in overt act 32.

40. On or about January 5, 1985, THOMAS C. TURNER signed, as a nominee for a partnership to be formed, a purchase and sale agreement for approximately 188 acres of real property for a purchase price of $1,750,000.

41. On or about January 26, 1985, THOMAS C. TURNER made application to Security First S & L requesting a joint venture agreement and a land acquisition loan for the real property described in overt act number 40.

42. During and between January 28, 1985 and March 27, 1985, THOMAS C. TURNER sought to obtain a developers fee up front from Security First S & L which the financial institution refused.

43. On or about March 26, 1985, THOMAS C. TURNER signed a partnership agreement entitled "Mallard Landing Associates, Ltd. along with JOHN EDGERTON and Michael Braren.

44. On or about March 27, 1985, Security First S & L loaned $1.1 million to THOMAS C. TURNER and his partnership for the acquisition of the land referred to in overt act number 40.

45. On or about March 27, 1985, a mortgage note in the amount of $200,000 between Mallard Landing Associates, Ltd. and Michael Braren was filed as a lien subordinate to the financial institution mortgage on the property referred to in overt act number 40.

46. During and between March 1985 and November, 1985, THOMAS C. TURNER had conversations with John Edgerton and Michael Braren in which they discussed a method to obtain money up front for TURNER, Edgerton and Braren in the development of property known as Mallard Landing.

47. In or about November, 1985, THOMAS C. TURNER made application to Caribank for a land development loan for Mallard Landing that would provide construction funds for Mallard Landing and pay off existing mortgages on the property.

48. On or about November 27, 1985, THOMAS C. TURNER received from Caribank a commitment to loan $2,658,000 to Mallard Landing Associates, Ltd. for land development of property known as Mallard Landing.

49. On or about December 2, 1985, THOMAS C. TURNER caused Michael Braren to execute an Assignment of Mortgage document that assigned to a trustee a $200,000 mortgage, which had been filed as a lien on the Mallard Landing property.

50. On or about December 2, 1985, Michael Braren provided THOMAS C. TURNER with an estoppel letter that was to be sent to Caribank that reflected the amount of the

$200,000 mortgage plus interest that included a forged signature of the trustee referred to in overt act number 49.

51. In or about December, 1985, Michael Braren provided THOMAS C. TURNER with a "Satisfaction of Mortgage" that represented the $200,000 mortgage had been paid in full and included a forged signature of the trustee referred to in overt act number 49.

52. On or about December 6, 1985, THOMAS C. TURNER provided the forged estoppel letter referred to in overt act number 50 to Caribank and advised Caribank that he possessed the Satisfaction of Mortgage which would be recorded once the mortgage was paid with part of the bank loan proceeds.

53. On or about December 10, 1985, Caribank loaned $2,658,000 to a partnership of THOMAS C. TURNER for the development of the real property known as Mallard Landing.

54. On or about December 11, 1985, THOMAS C. TURNER signed a Loan Closing Statement that falsely stated that he had disbursed $217,424.62 of the Caribank loan proceeds to the trustee referred to in overt act number 49.

55. On or about December 11, 1985, THOMAS C. TURNER sent to Caribank the Loan Closing Statement referred to in overt act number 54.

56. On or about December 11, 1985, THOMAS C. TURNER caused to be issued checks in the amount of $72,474.88 to himself, John Edgerton, and Michael Braren from the Caribank loan proceeds, totalling $217,424.62, which represented a "developer's fee" for TURNER, Edgerton, and Braren.

57. On or about December 20, 1985, THOMAS C. TURNER caused to be delivered a letter to Security First S & L falsely stating that Caribank loan proceeds were used to pay off the trustee referred to in overt act number 54 and enclosing with the letter a copy of the false Caribank Loan Settlement Statement signed by THOMAS C. TURNER.

58. On or about November 25, 1985, at St. Johns County, Florida, ELLIS E. NEDER, JR. signed a purchase and sale agreement for some real property in St. Johns County on behalf of First Frontier Corporation for the purchase price of $125,000.

59. On or about January 1, 1986, ELLIS E. NEDER, JR. signed a purchase and sale agreement for the same property described in overt act number 58 purchasing the property for $290,000 from the seller, AMH, Inc. The purchase and sale agreement included a forged signature of Mary Kerr as president of AMH, Inc.

60. On or about February 17, 1986, Caribank loaned $217,500 to Beach Harbour, Ltd., a partnership of ELLIS E. NEDER, JR. for the land acquisition of the real property described in overt act numbers 58 and 59. The money was wired by Caribank to the trust account of THOMAS C. TURNER.

61. On or about February 17, 1985, THOMAS C. TURNER disbursed from Caribank loan proceeds a check in the amount of $78,620.81 to AMH, Inc. and provided the check to ELLIS E. NEDER, JR.

62. On or about February 19, 1986, ELLIS E. NEDER, JR. sent a letter with an enclosed affidavit to an attorney representing Caribank which affidavit stated that NEDER did not share in any profits of AMH, Inc. The letter of NEDER stated that the affidavit was in response to the

conversation the attorney had with THOMAS C. TURNER. A copy of the letter and affidavit were sent to TURNER by NEDER.

63. On or about November 11, 1985, at St. Johns County, Florida, ELLIS E. NEDER, JR. signed a purchase and sale agreement as vice president of First Frontier Corporation to purchase property in St. Johns County for the price of $320,000.

64. On or about November 22, 1985, ROY F. SMITH, JR. and PETER A. FOGG appraised the property described in overt act number 63 at $1,570,000, fair market value.

65. On or about December 3, 1985, ELLIS E. NEDER, JR. signed a purchase and sale agreement for the property described in overt act number 63 for $1,525,000 from Islands of San Sebastian, Inc. The contract was also signed on behalf of the corporation by MARY C. MILLIS who used the name "M. C. Rozier", and falsely acknowledged that she had received $400,000 deposit from ELLIS E. NEDER, JR.

66. On or about December 17, 1985, ELLIS E. NEDER, JR. caused a memorandum to be sent to THOMAS C. TURNER requesting that TURNER create a corporation known as Islands of San Sebastian, Inc. "with M.C. Rozier to sign all documents".

67. On or about December 19, 1985, THOMAS C. TURNER caused the articles of incorporation for Islands of San Sebastian, Inc. to be sent to the Secretary of State of the State of Florida; the articles of incorporation were signed by MARY C. MILLIS, who signed the articles using the name "M. C. Rozier".

68. On or about January 10, 1986, THOMAS C. TURNER notarized the signature of "M. C. Rozier"

executed by MARY C. MILLIS as president of Islands of San Sebastian, Inc. on a warranty deed transferring real property between Islands of San Sebastian, Inc. and Islands of San Sebastian, Ltd., a partnership of ELLIS E. NEDER, JR.

69. On or about January 10, 1986, THOMAS C. TURNER notarized an owners affidavit provided by MARY C. MILLIS who signed the affidavit "M. C. Rozier" as president of Islands of San Sebastian, Inc.

70. On or about January 10, 1986, Caribank loaned $1,177,500 to Islands of San Sebastian, Ltd., a partnership of ELLIS E. NEDER, JR., for the land acquisition referred to in overt acts number 63 and 65 and wired this money to the trust account of THOMAS C. TURNER.

71. On or about January 10, 1986, THOMAS C. TURNER disbursed a check totaling $706,964.66 from the Caribank loan proceeds, made the check payable to Islands of San Sebastian, Inc. and provided the check to ELLIS E. NEDER, JR. who endorsed the check and deposited it into his personal bank account.

72. On or about January 10, 1986, ELLIS E. NEDER, JR. submitted an affidavit to Caribank stating that he was not affiliated with the Islands of San Sebastian, Inc. from whom he had purchased the real property that formed the basis of the land acquisition loan from Caribank.

73. On or about January 10, 1986, THOMAS C. TURNER disbursed a $16,000 check from the Caribank loan proceeds made payable to Neder Properties, Inc. which check was given by ELLIS E. NEDER, JR. to MARY C. MILLIS a/k/a M. C. Rozier.

74. On or about January 17, 1986, MARY C. MILLIS cashed a $16,000 Neder Properties, Inc. check and obtained three $5,000 cashier's checks made payable to herself

and opened up a checking account in her own name with the remaining $1,000 cash.

75. On or about January 10, 1986, THOMAS C. TURNER caused to be issued a check made payable to TURNER AND FORD, P.A. in the amount of $8,000 from the Caribank loan proceeds for attorney's fees for THOMAS C. TURNER.

76. On or about November 8, 1985, at St. Johns County, Florida, ELLIS E. NEDER, JR. agreed to purchase some real property in St. Johns County on behalf of First Frontier Corporation, and signed the $540,060 purchase and sale agreement as President of First Frontier Corporation.

77. On or about December 2, 1985, HORACE MARSH signed a purchase and sale agreement for the same real property described in overt act number 76 for the amount of $1,130,000. HORACE MARSH signed the contract as president and falsely acknowledged in the contract receipt of a $282,500 deposit from ELLIS E. NEDER, JR.

78. On or about December 13, 1985, ROY F. SMITH, JR. and PETER A. FOGG appraised the real property described in overt act number 76 at $1,130,000, fair market value.

79. On or about January 24, 1986, Carteret S & L loaned $847,500 to Players Place, Ltd., a partnership of ELLIS E. NEDER, JR., for the land acquisition of the property described in overt act number 76. This money was wired to the trust account of THOMAS C. TURNER.

80. On or about January 24, 1986, THOMAS C. TURNER issued a check from the Carteret S & L loan proceeds in the amount of $242,412.53 made payable to First Frontier Corporation and provided the check to ELLIS E.

NEDER, JR. who endorsed the check and deposited it into his personal account.

81. On or about February 6, 1986, at St. Johns County, Florida, ELLIS E. NEDER, JR. signed a purchase and sale contract for real property in St. Johns County on behalf of First Frontier Corporation for a purchase price of $1,054,500.

82. On or about February 10, 1986, HORACE MARSH signed a $3,135,000 purchase and sale contract as President of T.A.E., Inc. for the real property described in overt act number 81 and falsely acknowledged receipt of a deposit of $783,500 from ELLIS E. NEDER, JR. for the purchase of that property.

83. On or about April 1, 1986, Earl B. Miller appraised the property described in overt act number 81 at $3,142,000, fair market value.

84. On or about April 21, 1986, ELLIS E. NEDER, JR. signed an assignment of a purchase and sale contract as vice president of First Frontier Corporation which assigned the purchase and sale contract described in overt act number 81 to TEAE, Inc.

85. On or about April 21, 1986, THOMAS C. TURNER notarized the signature of ELLIS E. NEDER, JR. as the vice president of First Frontier Corporation in an assignment of the purchase and sale agreement to T.E.A.E., Inc. referred to in overt act number 84.

86. On or about April 24, 1986, TEAE, Inc. was incorporated with the State of Florida. HORACE MARSH was the incorporator, the initial director, and the initial registered agent of TEAE, Inc.

87. On or about April 24, 1986, HORACE MARSH issued 1000 shares of TEAE, Inc. common stock to himself.

88. On or about April 29, 1986, Caribank loaned $2,350,000 to Stokes Landing, Ltd., a partnership of ELLIS E. NEDER, JR., for the land acquisition described in overt acts number 81 and 82.

89. On or about April 29, 1986, THOMAS C. TURNER made revisions to an affidavit of ELLIS E. NEDER, JR. that was to be submitted to Caribank in which NEDER stated he had no ownership interest in TEAE, Inc. nor did he share in any profits of the corporation.

90. On or about April 29, 1986, ELLIS E. NEDER, JR. submitted an affidavit to Caribank swearing that he had no ownership control in TEAE, Inc. nor did he share in any profits of the corporation.

91. On or about April 29, 1986, Caribank wired $2,350,000 loan proceeds to THOMAS C. TURNER who disbursed $905,026.25 in the form of a check from the loan proceeds to TEAE, Inc. TURNER provided the check to ELLIS E. NEDER, JR. who endorsed it and deposited it into his personal account.

92. On or about May 2, 1986, THOMAS C. TURNER caused to be issued a check in the amount of $21,000 payable to TURNER AND FORD, P.A. from the proceeds of the Caribank loan for attorney's fees for TURNER.

93. On or about June 13, 1986, ELLIS E. NEDER, JR. signed two purchase and sale contracts as president of First Prospector, Inc. for real property in Duval County. The purchase price amounts of the contracts were $816,000 and $1,135,000.

94. On or about June 16, 1986, HORACE MARSH signed a $4,083,600 purchase and sale contract as president of RBB, Inc. selling the real property described in overt act number 93 to a partnership of ELLIS E. NEDER, JR. and falsely acknowledged receipt of $1,020,900 deposit by ELLIS E. NEDER, JR. for the purchase of the real property.

95. On or about June 26, 1986, RBB, Inc. was incorporated with the State of Florida by the law firm of TURNER AND FORD, P.A. HORACE MARSH was the incorporator, the initial director, and the initial registered agent for the corporation.

96. On or about August 20, 1986, THOMAS C. TURNER sent a letter to an attorney representing the seller in the real estate transaction described in overt act number 93 with an attachment consisting of an Assignment of Contracts and Documents signed by ELLIS E. NEDER, JR. as president of First Prospector, Inc. assigning the purchase and sale agreement rights to RBB, Inc.

97. On or about November 12, 1986, THOMAS C. TURNER caused to be drafted a Warranty Deed conveying two easements from Gorham Associates, Ltd. to Southern Grove, Ltd.

98. On or about November 12, 1986, ELLIS E. NEDER, JR. requested Richard M. Romano to sign the Warranty Deed described in overt act number 97 even though Neder was advised by Romano that he (Romano) had no authority to execute any documents on behalf of Gorham Associates, Ltd.

99. In or about November 1986, at a meeting among ELLIS E. NEDER, JR., HARVEY M. MANSS, and other individuals concerning the project known as Southern Grove, HARVEY M. MANSS told an attorney who was

concerned about an invalid conveyance of property as an easement to Southern Grove, Ltd. not to say something he would regret.

100. In or about November 1986, THOMAS C. TURNER was advised that Richard Romano lacked the capacity to execute the deed referred to in overt act number 97 and that the signature would be invalid.

101. On or about November 12, 1986, THOMAS C. TURNER caused the deed described in overt act number 97 to be filed with the Clerk of Duval County, Florida.

102. On or about May 7, 1987, THOMAS C. TURNER prepared a mortgage and witnessed the signature of ELLIS E. NEDER, JR. on a $317,263 mortgage in favor of Blosam Contractors relating to the Cedar Creek project.

103. On or about May 7, 1987, THOMAS C. TURNER caused to be filed with the St. Johns County Clerk the mortgage described in overt act number 102 as a lien on real property of a partnership of ELLIS E. NEDER, JR. located in St. Johns County.

104. On or about January 11, 1988, Linda Clary, secretary to THOMAS C. TURNER, sent a letter with an enclosed note and mortgage to ELLIS E. NEDER, JR. stating, "Tom had drafted (the documents) in accordance with his discussion with Ellis (Neder)".

105. On or about January 20, 1988, ELLIS E. NEDER, JR. signed a loan modification agreement with Amerifirst S & L that conditioned the loan modification upon additional payment of monies in the amount of $146,800.

106. On or about January 20, 1988, ELLIS E. NEDER, JR. provided a certified check in the amount of $146,800 to Amerifirst S & L, the source of which came from

loan proceeds of a land development loan obtained by NEDER from the UBCJA for property known as Reddie Point.

107. On or about January 11, 1988, THOMAS C. TURNER prepared a Promissory Note and Mortgage Deed in the amount of $280,000 payable to a trustee and sent these documents to ELLIS E. NEDER, JR. to be executed and filed as a lien on property known as The View in St. John's County. The trustee was unaware of the existence of these documents or any trust.

108. On or about January 21, 1988, ELLIS E. NEDER, JR., as President of The View, Inc., executed a Promissory Note in the amount of $280,000 payable to a trustee and a related Mortgage Deed payable to a trustee with the intent that the Mortgage and Promissory Note would be filed as a lien on property known as The View in St. John's County.

109. On or about January 31, 1988, ELLIS E. NEDER, JR., made application to the Central Bank for a land development loan in the amount of $4,700,000 for development of property known as The View in St. John's County and represented falsely that the property had been purchased for $1,130,000.

110. On or about March 11, 1988, ELLIS E. NEDER, JR. received a commitment letter from the Central Bank agreeing to loan $4,700,000 to The View, Inc. and ELLIS E. NEDER, Jr. for land development of property known as The View in St. John's County.

111. On or about March 16, 1988, ELLIS E. NEDER, JR. sent to a representative of the Central Bank a letter accepting the terms of the commitment letter issued by the Central Bank of the South, but conditioning his acceptance upon the financial institution disbursing, at the closing of the development loan, "$1,130,000 to retire the debt on the land."

112. On or about July 14, 1985, Ronald Oberdier, an attorney, signed a "Condominium Reservation Agreement" for a project known as Southern Grove that contained false representations that he had deposited $500 with an escrow agent towards the purchase of a condominium.

113. On or about July 14, 1985, ELLIS E. NEDER, JR. submitted or caused to be submitted to Security First S & L a "Condominium Reservation Agreement" in the name of Ronald Oberdier as a condition precedent to obtaining a $5,400,000 construction loan for the project known as Southern Grove.

114. On or about July 15, 1985, Herman Gradick, an architect, signed a "Condominium Reservation Agreement" for a project known as Southern Grove that falsely represented that he had deposited $500 with an escrow agent towards the purchase of a condominium.

115. On or about July 15, 1985, ELLIS E. NEDER, JR. submitted or caused to be submitted to Security First S & L a "Condominium Reservation Agreement" in the name of Herman Gradick as a condition precedent to obtaining a $5,400,000 construction loan for the project known as Southern Grove.

116. On or about July 19, 1985, Jerry W. McDaniel, a realtor associate, signed a "Condominium Reservation Agreement" for a project known as Southern Grove that falsely represented that he had deposited $500 with an escrow agent towards the purchase of a condominium.

117. On or about July 19, 1985, ELLIS E. NEDER, JR. submitted or caused to be submitted to Security First S & L a "Condominium Reservation Agreement" in the name of Jerry W. McDaniel as a condition precedent to

obtaining a $5,400,000 construction loan for the project known as Southern Grove.

118. On or about July 21, 1985, MICHAEL J. ARINGTON signed a "Condominium Reservation Agreement" for a project known as Southern Grove that falsely represented that he had deposited $500 with an escrow agent towards the purchase of a condominium.

119. On or about July 21, 1985, ELLIS E. NEDER, JR. submitted or caused to be submitted to Security First S & L a "Condominium Reservation Agreement" in the name of MICHAEL J. ARINGTON as a condition precedent to obtaining a $5,400,000 construction loan for the project known as Southern Grove.

120. On or about July 29, 1985, Christopher A. White, an attorney, signed a "Condominium Reservation Agreement" for a project known as Southern Grove that falsely represented that he had deposited $500 with an escrow agent towards the purchase of a condominium.

121. On or about July 29, 1985, ELLIS E. NEDER, JR. submitted or caused to be submitted to Security First S & L a "Condominium Reservation Agreement" in the name of Christopher A. White as a condition precedent to obtaining a $5,400,000 construction loan for the project known as Southern Grove.

122. On or about September 25, 1985, Janet Miller, a realtor associate, signed a "Condominium Reservation Agreement" for a project known as Southern Grove that falsely represented that she had deposited $500 with an escrow agent towards the purchase of a condominium.

123. On or about September 25, 1985, ELLIS E. NEDER, JR. submitted or caused to be submitted to Security First S & L a "Condominium Reservation Agreement" in the

name of Janet Miller as a condition precedent to obtaining a $5,400,000 construction loan for the project known as Southern Grove.

124. On or about October 11, 1985, Sylvia Sanders, a realtor associate, signed a "Condominium Reservation Agreement" for a project known as Southern Grove that falsely represented that she had deposited $500 with an escrow agent towards the purchase of a condominium.

125. On or about October 11, 1985, ELLIS E. NEDER, JR. submitted or caused to be submitted to Security First S & L a "Condominium Reservation Agreement" in the name of Sylvia Sanders as a condition precedent to obtaining a $5,400,000 construction loan for the project known as Southern Grove.

126. On or about October 15, 1985, Joseph E. Warren, an attorney, signed a "Condominium Reservation Agreement" for a project known as Southern Grove that falsely represented that he had deposited 4500 with an escrow agent towards the purchase of a condominium.

127. On or about October 15, 1985, ELLIS E. NEDER, JR. submitted or caused to be submitted to Security First S & L a "Condominium Reservation Agreement" in the name of Joseph E. Warren as a condition precedent to obtaining a $5,400,000 construction loan for the project known as Southern Grove.

128. On or about October 25, 1985, Donald T. Moses, an attorney, signed a "Condominium Reservation Agreement" for a project known as Southern Grove that falsely represented that he had deposited $500 with an escrow agent towards the purchase of a condominium.

129. On or about October 25, 1985, ELLIS E. NEDER, JR. submitted or caused to be submitted to Security

First S & L a "Condominium Reservation Agreement" in the name of Donald T. Moses as a condition precedent to obtaining a $5,400,000 construction loan for the project known as Southern Grove.

130. On or about October 25, 1985, Michael A. Ossi, an attorney, signed a "Condominium Reservation Agreement" for a project known as Southern Grove that falsely represented that he had deposited $500 with an escrow agent towards the purchase of a condominium.

131. On or about October 25, 1985, ELLIS E. NEDER, JR. submitted or caused to be submitted to Security First S & L a "Condominium Reservation Agreement" in the name of Michael A. Ossi as a condition precedent to obtaining a $5,400,000 construction loan for the project known as Southern Grove.

132. On or about October 25, 1985, Gene E. Porter, Jr., an attorney, signed a "Condominium Reservation Agreement" for a project known as Southern Grove that falsely represented that he had deposited $500 with an escrow agent towards the purchase of a condominium.

133. On or about October 25, 1985, ELLIS E. NEDER, JR. submitted or caused to be submitted to Security First S & L a "Condominium Reservation Agreement" in the name of Gene E. Porter, Jr. as a condition precedent to obtaining a $5,400,000 construction loan for the project known as Southern Grove.

134. On or about December 10, 1986, MICHAEL J. ARINGTON signed a "Deposit Receipt and Purchase and Sale Agreement" that falsely represented that he had paid a down payment of $7,990 to ELLIS E. NEDER, JR. at the execution of the agreement for the purchase of a condominium at a project known as Southern Grove.

135. On or about December 10, 1986, MICHAEL J. ARINGTON signed an agreement with ELLIS E. NEDER, JR. in which ARINGTON agreed to allow NEDER to utilize the name and credit of ARINGTON in exchange for the deposit on the purchase price of a condominium and in which ARINGTON agreed not to disclose the terms of the agreement to any third party.

136. On or about December 22, 1986, MICHAEL J. ARINGTON received from defendant ELLIS E. NEDER, JR. a check in the amount of $7,990 which MICHAEL J. ARINGTON deposited in an account at American National Bank.

137. On or about December 31, 1986, MICHAEL J. ARINGTON caused to be issued a cashiers check in the amount of $7,990 payable to Gerald Bettman, Esquire, escrow agent for ELLIS E. NEDER, JR. on the Southern Grove project.

138. In or about January, 1987 ELLIS E. NEDER, JR. advised a loan processor to alter the salary reported in the "Residential Loan Application" of MICHAEL J. ARINGTON so that ARINGTON would qualify to obtain financing on the purchase of a condominium at Southern Grove.

139. In or about February, 1987, ELLIS E. NEDER, JR. and MICHAEL J. ARINGTON submitted and caused to be submitted a "Residential Loan Application" to Security First S&L that contained false information concerning the monthly gross salary of ARINGTON.

140. On or about December 22, 1986, Vivian Taylor Moilanen signed a "Deposit Receipt and Purchase and Sale Agreement" that falsely represented that she had paid a down payment of $7,990 to ELLIS E. NEDER, JR. at the

execution of the agreement for the purchase of a condominium at a project known as Southern Grove.

141. On or about December 22, 1986, Vivian Taylor Moilanen signed an agreement with ELLIS E. NEDER, JR. in which Moilanen agreed to allow NEDER to utilize the name and credit of Moilanen in exchange for the deposit on the purchase price of a condominium and in which TAYLOR agreed not to disclose the terms of the agreement to any third party.

142. On or about December 22, 1986, Vivian Taylor Moilanen received from defendant ELLIS E. NEDER, JR. a check in the amount of $7,990 which Moilanen deposited in an account at American National Bank.

143. On or about March 12, 1987 Vivian Taylor Moilanen caused to be issued a cashiers check in the amount of $7,990 payable to Gerald Bettman, Esquire, escrow agent for ELLIS E. NEDER, JR. on the Southern Grove project.

144. On or about December 29, 1986, Howard L. Rundquist signed a "Deposit Receipt and Purchase and Sale Agreement" that falsely represented that he had paid a down payment of $7,990 to ELLIS E. NEDER, JR. at the execution of the agreement for the purchase of a condominium at a project known as Southern Grove.

145. On or about December 29, 1986, Howard L. Rundquist signed an agreement with ELLIS E. NEDER, JR. in which Rundquist agreed to allow NEDER to utilize the name and credit of Rundquist in exchange for the deposit on the purchase price of a condominium and in which Rundquist agreed not to disclose the terms of the agreement to any third party.

146. On or about December 30, 1986, Howard L. Rundquist received from defendant ELLIS E. NEDER, JR.

a check in the amount of $8,090 which Rundquist deposited in an account at American National Bank.

147. On or about March 12, 1987, Howard L. Rundquist caused to be issued a cashiers check in the amount of $7,990 payable to Gerald Bettman, Esquire, escrow agent for ELLIS E. NEDER, JR. on the Southern Grove project.

148. On or about January 25, 1987, STEVEN A. MOORE caused to be signed a "Deposit Receipt and Purchase and Sale Agreement" that falsely represented that Louis V. and Joyce C. Lourcey had paid a down payment of $7,990 to ELLIS E. NEDER, JR. at the execution of the agreement for the purchase of a condominium at a project known as Southern Grove.

149. On or about March 12, 1987, STEVEN A. MOORE received from defendant ELLIS E. NEDER, JR. a check in the amount of $8,390 in the name of Louis V. and Joyce C. Lourcey which was exchanged by MOORE for a cashier's check payable to an escrow agent at the Southern Grove project.

150. On or about March 12, 1987, STEVEN A. MOORE caused to be issued a cashiers check in the amount of $7,990 payable to Gerald Bettman, Esquire, escrow agent for ELLIS E. NEDER, JR. on the Southern Grove project.

151. On or about February 9, 1987, Christopher A. White signed a "Deposit Receipt and Purchase and Sale Agreement" that falsely represented that he had paid a down payment of $7,990 to ELLIS E. NEDER, JR. at the execution of the agreement for the purchase of a condominium at a project known as Southern Grove.

152. On or about February 5, 1987, Christopher A. White received from defendant ELLIS E. NEDER, JR. a

check in the amount of $8,040 which Christopher A. White deposited in an account at American National Bank.

153. On or about February 4, 1987, Christopher A. White caused to be issued a cashiers check in the amount of $7,990 payable to Gerald Bettman, Esquire, escrow agent for ELLIS E. NEDER, JR. on the Southern Grove project.

154. On or about February 9, 1987, STEVEN A. MOORE caused to be signed a "Deposit Receipt and Purchase and Sale Agreement" that falsely represented that John D. and Angela F. Seymour had paid a down payment of $8,390 to ELLIS E. NEDER, JR. at the execution of the agreement for the purchase of a condominium at a project known as Southern Grove.

155. On or about March 12, 1987, STEVEN A. MOORE received from defendant ELLIS E. NEDER, JR. a check in the amount of $7,990 in the name of John D. Seymour which was exchanged by MOORE for a cashier's check payable to an escrow agent at the Southern Grove project.

156. On or about March 12, 1987, STEVEN A. MOORE caused to be issued a cashiers check in the amount of $7,990 payable to Gerald Bettman, Esquire, escrow agent for ELLIS E. NEDER, JR. on the Southern Grove project.

157. During and between December 31, 1986 and March 12, 1987, ELLIS E. NEDER, JR. caused Gerald Bettman to send letters to Security First S & L stating that Bettman, an escrow agent, had received checks from purported purchasers as deposits for the purchase of condominiums at Southern Grove.

158. During and between January, 1987 and November, 1987, Gerald Bettman kept cashiers checks received from the purported purchasers referred to in overt act number

155 without depositing them in any bank account contrary to the requirements of Florida Statute 718.202.

159. On or about November 17, 1987 Gerald Bettman provided to defendant ELLIS E. NEDER, JR. the cashiers checks described in overt act number 156 to defendant ELLIS E. NEDER, JR., who deposited the checks totalling $80,700 in an account of his.

160. On or about April 15, 1987, HORACE MARSH failed to report on his 1986 U.S. Individual Income Tax Return, Form 1040, that he had received $33,648 as interest income in 1986 from ELLIS E. NEDER, JR.

161. On or about September 5, 1986, SANDRA McDANIEL received approximately $58,558 from land acquisition loan proceeds fraudulently obtained by ELLIS E. NEDER, JR. from Greyhound.

162. On or about July 29, 1987, HARVEY MANSS executed a Release of Lien on behalf of Sverdrup Corporation releasing the right of said corporation to file a lien against Reddie Point, Ltd. for labor and material furnished by Sverdrup Corporation upon payment of $50,000. The total amount of money owed to Sverdrup Corporation for architectural work completed at the Reddie Point project at that time was approximately $300,000.

163. On or about September 1, 1987, HARVEY MANSS caused a fraudulent invoice in the amount of $180,217 for architectural services to be submitted to the Union by ELLIS E. NEDER, JR. in support of a requisition for payment in the amount of $601,637.95.

164. On or about October 27, 1987, STEVEN A. MOORE requested a representative of Florida Floats to provide invoices in the amount of $60,000 and $50,000 as

advance billings for work to be performed at the Reddie Point project.

165. On or about October 27, 1987, HARVEY MANSS told a representative of Florida Floats to submit the invoices referred to in overt act number 164 even though Florida Floats had not performed any work relating to said invoices.

166. On or about October 29, 1987, ELLIS E. NEDER, JR., STEVEN A. MOORE, HARVEY MANSS, and WILLIAM THOMAS FREEMAN, JR. submitted the invoices referred to in overt act number 164 to the Union as support for part of a requisition to the Union to obtain $821,056.09 in construction loan proceeds.

167. In or about January, 1988, STEVEN A. MOORE contacted Doris Ray of Waverly J. Ray Associates, Inc. and advised her to submit an invoice billable to Reddie Point for amounts Waverly J. Ray Associates, Inc. was owed for survey work performed at various non-Reddie Point projects.

168. On or about January 6, 1988, WILLIAM THOMAS FREEMAN, JR. contacted Doris Ray of Waverly J. Ray Associates, Inc. and requested a fraudulent invoice letter in the amount of $10,000 for "Mobilization charge for horizontal control work".

169. On or about January 6, 1988, WILLIAM THOMAS FREEMAN, JR. caused the fraudulent invoice letter described in overt act number 168 to be submitted to the union in conjunction with a requisition to the Union to obtain $669,875.06 in construction loan proceeds.

170. On or about March 1, 1988, ELLIS E. NEDER, JR. and STEVEN A. MOORE requested a fraudulent $30,000 mobilization invoice from L.B.'s Lawn Care, Inc. and

directed the owners of said corporation what language and amount to be written on the invoice.

171. On or about March 1, 1988, ELLIS E. NEDER, JR., STEVEN A. MOORE, HARVEY MANSS, and WILLIAM THOMAS FREEMAN, JR. caused the fraudulent invoice described in overt act number 170 to be submitted to the Union as part of the requisition to the Union to obtain $804,594.50 in construction proceeds.

172. During and between December 30, 1984 and December 30, 1987, THOMAS C. TURNER obtained $226,224.55 in attorney's fees from loan proceeds received by ELLIS E. NEDER, JR. from various lenders.

173. During and between December 30, 1984 and December 30, 1987, THOMAS C. TURNER deposited into the account of TURNER AND FORD, P.A. title fees totalling $56,361.45 that had been obtained from loan proceeds received by ELLIS E. NEDER, JR. from various lenders.

174. On or about November 7, 1986, THOMAS C. TURNER caused to be recorded with the Clerk of Duval County a warranty deed transferring real property known as Reddie Point from Riverside Group, Inc. to Reddie Point Ltd., a partnership of ELLIS E. NEDER, JR., and caused documentary stamps to be affixed to the deed which reflected the sales price between the parties was $6,750,000 whereas NEDER had purchased the real property through First Frontier Corporation from the seller for approximately $3,900,000.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH TWELVE

A. INTRODUCTION

Part A of Count One is realleged and incorporated by reference as if set forth fully herein.

B. SCHEME AND ARTIFICE

Beginning on or about January 15, 1985, and continuing to on or about April 29, 1986, at Jacksonville, in the Middle District of Florida, and elsewhere,

ELLIS E. NEDER
THOMAS C. TURNER
TURNER AND FORD, P.A.
HORACE MARSH
STEVEN A. MOORE
JANET S. KING
SANDRA McDANIEL
MARY C. MILLIS
MICHAEL J. ARINGTON
ROY F. SMITH, JR.
ROY F. SMITH, JR. & ASSOCIATES, INC.
PETER A. FOGG

the defendants herein, did knowingly and willfully devise and intend to devise a scheme and artifice to obtain money, funds, and credits owned by and under the custody and control of the financial institutions identified below, the deposits of each of which were then insured either by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, by means of false and fraudulent pretenses, representations, and promises.

C. WAYS AND MEANS

The ways and means by which the scheme and artifice was carried out is as follows:

Part C, Section I, Land Acquisition Fraud, paragraphs one through thirteen, Section II, Land Development Fraud, paragraphs fourteen through twenty-two, and Section IV, Concealment, paragraph thirty-one, of Count One are realleged and incorporated by reference as if set forth fully herein.

D. EXECUTION OF SCHEME

On or about the dates set forth below at Jacksonville, in the Middle District of Florida, and elsewhere, the defendants set forth below, did knowingly and willfully execute and attempt to execute the scheme and artifice by submitting and causing to be submitted to the financial institutions described below the following documents:

1. Purchase and sale contracts, set forth below, for various parcels of real property that (a) falsely inflated the price ELLIS E. NEDER, JR., had actually paid, through the corporations, for the real property, and (b) falsely represented that ELLIS E. NEDER, JR. had placed a deposit of money with the corporate seller for the purchase of the property.

2. Affidavits, set forth below, that contained false representations to the financial institutions that ELLIS E. NEDER, JR. did not obtain any profits from the corporations that were selling various parcels of real property to ELLIS E. NEDER, JR.:

COUNT	DEFENDANTS	DATE	FINANCIAL INSTITUTION	DOCUMENT	AMOUNT OF LOAN
2	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH	1/15/85	Security First S&L	Contract	$822,500
3	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. STEVEN A. MOORE JANET S. KING SANDRA McDANIEL	6/28/95	Amerifirst S&L	Contract	$4,150,000
4	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH	8/9/85	Financial Federal S&L	Contract	$525,000

5	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH	10/31/85	Caribank	Contract	$1,125,000
6	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. STEVEN A. MOORE JANET S. KING SANDRA McDANIEL MICHAEL J. ARINGTON	11/19/85	Security First S&L	Contract	$5,400,000

7	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. MARY C. MILLIS ROY F. SMITH, JR. ROY F. SMITH, JR. & ASSOCIATES, INC. PETER A. FOGG	1/10/86	Caribank	Contract	$1,177,500
8	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH ROY F. SMITH, JR. ROY F. SMITH, JR. & ASSOCIATES, INC. PETER A. FOGG	1/24/86	Carteret S&L	Contract	$847,500

9	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARCH	2/17/86	Caribank	Contract	$217,500
10	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A.	2/19/86	Caribank	Affidavit	$217,500
11	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH	4/29/86	Caribank	Contract	$2,350,000
12	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A.	4/29/86	Caribank	Affidavit	$2,350,000

In violation of Title 18, United States Code, Sections 1344 and 2.

COUNTS THIRTEEN THROUGH TWENTY

A. INTRODUCTION

Part A of Count One is realleged and incorporated by reference as set forth fully herein.

B. CHARGE

Between on or about August 25, 1984, and April 1, 1986, at Jacksonville, in the Middle District of Florida, the defendants, as listed below, did knowingly and willfully materially overvalue, caused to be overvalued, and aid and abet in the overvaluation of land by means of false and inflated appraisals, which were submitted to the federally insured financial institutions listed below, pertaining to the below described projects, with the intent to and for the purpose of influencing the actions of such financial institutions:

COUNT	DEFENDANTS	DATE	FINANCIAL INSTITUTION	PROJECT
13	ROY F. SMITH, JR. PETER A. FOGG ELLIS E. NEDER, JR. ROY F. SMITH & ASSOCIATES, INC.	8/25/94	Duval Federal S & L	Cedar Creek (Parcel 1)
14	ROY F. SMITH, JR. PETER A. FOGG ELLIS E. NEDER, JR. ROY F. SMITH & ASSOCIATES, INC.	9/11/84	Duval Federal S & L	Cedar Creek (Parcel 2)
15	ROY F. SMITH, JR. PETER A. FOGG ELLIS E. NEDER, JR. ROY F. SMITH & ASSOCIATES, INC.	4/5/85	Baltimore Federal	River Creek

16	ELLIS E. NEDER, JR.	8/10/85	Caribank	Beach Harbor I
17	ELLIS E. NEDER, JR.	8/10/85	Caribank	Beach Harbor II
18	ROY F. SMITH, JR. PETER A. FOGG ELLIS E. NEDER, JR. ROY F. SMITH & ASSOCIATES, INC.	11/22/85	Caribank	San Sebastian
19	ROY F. SMITH, JR. PETER A. FOGG ELLIS E. NEDER, JR. ROY F. SMITH & ASSOCIATES, INC.	12/13/85	Carteret S & L	The View
20	ELLIS E. NEDER, JR.	4/1/86	Caribank	Flagler Landing

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNTS TWENTY-ONE THROUGH THIRTY

A. INTRODUCTION

Part A of Count One is realleged and incorporated by reference as set forth fully herein.

B. SCHEME

Between in or about August, 1984, and in or about April, 1986, at Jacksonville, in the Middle District of Florida, and elsewhere,

ELLIS E. NEDER
THOMAS C. TURNER
TURNER AND FORD, P.A.
HORACE MARSH
MARY C. MILLIS
ROY F. SMITH, JR.
ROY F. SMITH, JR. & ASSOCIATES, INC.
PETER A. FOGG

the defendants herein, knowingly and willfully devised and intended to devise a scheme and artifice to defraud and to obtain money and property from the financial institutions set forth below, by means of false and fraudulent pretenses, representations, and promises, well knowing that the pretenses, representations, and promises were false and fraudulent.

C. WAYS AND MEANS

The ways and means by which the scheme was carried out is as follows:

Part C, Section I, Land Acquisition Fraud, paragraphs one through thirteen, and Section IV, Concealment, paragraph thirty-one, of Count One are realleged and incorporated by reference as if set forth fully herein.

D. EXECUTION OF SCHEME

On or about the dates set forth below, at Jacksonville, in the Middle District of Florida, and elsewhere, the defendants, set forth below, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, did take and receive and cause to be taken and received, from the United States mails, commitment letters of financial institutions extending land acquisition loan offerings to ELLIS E. NEDER, JR., as set forth below:

COUNT	DEFENDANTS	DATE	FINANCIAL INSTITUTION	AMOUNT OF LOAN
21	ELLIS E. NEDER, JR. THOMAS C. TURNER HORACE MARSH ROY F. SMITH, JR. ROY F. SMITH, JR. & ASSOCIATES, INC. PETER A. FOGG	8/28/84	Duval Federal S & L	$ 273,000
22	ELLIS E. NEDER, JR. THOMAS C. TURNER HORACE MARSH ROY F. SMITH, JR. ROY F. SMITH, JR. & ASSOCIATES, INC. PETER A. FOGG	10/3/84	Duval Federal S & L	$ 68,000

23	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH	12/24/84	Security First S & L	$ 822,500
24	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH ROY F. SMITH, JR. ROY F. SMITH, JR. & ASSOCIATES, INC. PETER A. FOGG	6/5/85	Baltimore Federal	$ 1,186,750

25	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH	7/19/85	Financial Federal S & L	$ 525,000
26	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH	10/21/85	Caribank	$ 1,125,000

27	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. MARY C. MILLIS ROY F. SMITH, JR. ROY F. SMITH, JR. & ASSOCIATES, INC. PETER A. FOGG	12/20/85	Caribank	$ 1,177,500
28	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH ROY F. SMITH, JR. ROY F. SMITH, JR. & ASSOCIATES, INC. PETER A. FOGG	1/14/86	Carteret S & L	$ 847,500

29	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH	2/1/86	Caribank	$ 217,500
30	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH	4/25/86	Caribank	$ 2,350,000

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS THIRTY-ONE THROUGH THIRTY-THREE

A. INTRODUCTION

Part A of Count One is realleged and incorporated by reference as if set forth fully herein.

B. SCHEME AND ARTIFICE

Between in or about March, 1985, and in or about November, 1986, at Jacksonville and Tampa, in the Middle District of Florida, and elsewhere

ELLIS E. NEDER
THOMAS C. TURNER
TURNER AND FORD, P.A.
HORACE MARSH
ROY F. SMITH, JR.
ROY F. SMITH, JR. & ASSOCIATES, INC.
PETER A. FOGG

the defendants herein, knowingly and willfully devised and intended to devise a scheme and artifice to defraud and to obtain money and property from the financial institutions or entities set forth below, by means of false and fraudulent pretenses, representations, and promises, well knowing that the pretenses, representations, and promises were false and fraudulent.

C. WAYS AND MEANS

The ways and means by which the scheme and artifice was carried out is as follows:

Part C, Section I, Land Acquisition Fraud, paragraphs one through thirteen, and Section IV, Concealment, paragraph thirty-one, of Count One are realleged and incorporated by reference as if set forth fully herein.

D. TRANSMISSIONS

On or about the dates listed below, at Jacksonville, in the Middle District of Florida, the defendants as described below, for the purpose of executing and attempting to execute the aforesaid scheme and artifice to defraud, did transmit and cause to be transmitted in interstate commerce by means of wire communications certain signs, signals, and sounds, that is, wire transfer, of monies described below:

COUNT	DEFENDANTS	DATE	WIRE TRANSFER TO/FROM	FINANCIAL INSTITUTION/ ENTITY	AMOUNT OF MONEY WIRED
31	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH ROY F. SMITH, JR. ROY F. SMITH, JR. & ASSOCIATES, INC. PETER A. FOGG	6/18/85	Tampa, Florida Baltimore, Maryland	Baltimore Federal	$1,186,750

32	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH ROY F. SMITH, JR. ROY F. SMITH, JR. & ASSOCIATES, INC. PETER A. FOGG	9/5/86	Jacksonville, Florida Phoenix, Arizona	Greyhound	$2,800,000
33	ELLIS E. NEDER, JR. THOMAS C. TURNER TURNER AND FORD, P.A. HORACE MARSH	11/7/86	Jacksonville, Florida Indianapolis, Indiana	Union	$5,720,000

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS THIRTY-FOUR AND THIRTY-FIVE

A. INTRODUCTION

Part A of Count One is realleged and incorporated by reference as if set forth fully herein.

B. SCHEME

Between in or about March, 1985, and in or about September, 1987, at Jacksonville, in the Middle District of Florida, and elsewhere,

ELLIS E. NEDER
THOMAS C. TURNER
TURNER AND FORD, P.A.
STEVEN A. MOORE
JANET S. KING
SANDRA McDANIEL
MICHAEL J. ARINGTON

the defendants herein, knowingly and willfully devised and intended to devise a scheme and artifice to defraud and to obtain money and property from the financial institutions set forth below, by means of false and fraudulent pretenses, representations, and promises, well knowing that the pretenses, representations, and promises were false and fraudulent.

C. WAYS AND MEANS

The ways and means by which the scheme and artifice was carried out is as follows:

Part C, Section II, Land Development Fraud, paragraphs fourteen through twenty-two, and Section IV, Concealment, paragraph thirty-one, of Count One are realleged and incorporated by reference as if set forth fully herein.

D. EXECUTION OF SCHEME

On or about the dates set forth below, at Jacksonville, in the Middle District of Florida, and elsewhere,

ELLIS E. NEDER, JR.
THOMAS C. TURNER
TURNER AND FORD, P.A.
STEVEN A. MOORE
JANET S. KING
SANDRA McDANIEL
MICHAEL J. ARINGTON

the defendants herein, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, did take and receive and cause to be taken and received commitment letters of financial institutions extending a loan offering to ELLIS E. NEDER, JR. from an authorized depository for mail matter delivered by the United States Postal Service as set forth below:

COUNT	DATE	FINANCIAL INSTITUTION	AMOUNT OF LOAN
34	3/28/85	Amerifirst S & L	$4,150,000
35	10/16/85	Security First S & L	$5,400,000

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS THIRTY-SIX THROUGH FORTY-TWO

On or between June 18, 1985 and October 15, 1985, at Jacksonville, in the Middle District of Florida, the defendants set forth below, did knowingly and willfully make and cause to be made materially false statements in a document entitled "Deposit Receipt and Purchase and Sale Agreement", in the names of purported purchasers described below, that were submitted to the Amerifirst S & L as part of an

application by ELLIS E. NEDER, JR. to obtain a $4,150,000 construction loan for a project known as Cedar Creek, with intent to and for the purpose of influencing the action of the Amerifirst S & L, the deposits of which were then insured by the Federal Savings and Loan Insurance Corporation, in that each "Deposit Receipt and Purchase and Sale Agreement" contained false representations that the purported purchaser had paid the sum of money listed below to ELLIS E. NEDER, JR. at the execution of the agreement for the purchase of a condominium at Cedar Creek, whereas in truth and fact, as the defendants then well knew, the statements were false in that the purchaser did not deposit any money for the purchase of a condominium at Cedar Creek:

COUNT	DEFENDANT(S)	DATE	NAME OF PURCHASER IN AGREEMENT	AMOUNT OF MONEY REPRESENTED AS DOWN PAYMENT
36	ELLIS E. NEDER, JR.	6/18/85	Victor and Gerry Moreau	$ 7,750
37	ELLIS E. NEDER, JR. SANDRA McDANIEL	6/20/85	Sandra McDaniel	$ 8,900
38	ELLIS E. NEDER, JR.	6/20/85	Mary Kerr	$ 8,900
39	ELLIS E. NEDER, JR. JANET S. KING	6/20/85	Dale A. Moehle	$ 7,100
40	ELLIS E. NEDER, JR.	6/25/85	David B. Owen	$ 8,900
41	ELLIS E. NEDER, JR.	6/25/85	Jack Bettman	$ 8,900
42	ELLIS E. NEDER, JR.	10/15/85	Martha G. Fox	$ 3,995

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNTS FORTY-THREE THROUGH SIXTY-ONE

Between on or about July 11, 1985, and October 25, 1985, at Jacksonville, in the Middle District of Florida, the defendants set forth below, did knowingly and willfully make and cause to be made materially false statements in a document entitled "Condominium Reservation Agreement", in the names of the purported buyers described below, that was submitted to Security First S & L as part of an application by ELLIS E. NEDER, JR. to obtain a $5,400,000 construction loan for a project known as Southern Grove, with intent to and for the purpose of influencing the action of Security First S & L, the deposits of which were then insured by the Federal Savings and Loan Insurance Corporation, in that each "Condominium Reservation Agreement" contained false representations that the purported buyer had deposited with and paid to an escrow agent $500 toward the purchase of a condominium at Southern Grove, whereas in truth and fact, as the defendants then well knew, the statements were false in that the buyers did not deposit $500 for the reservation of a condominium at Southern Grove:

COUNT	DEFENDANT(S)	DATE	NAME OF BUYER IN AGREEMENT	TOTAL PURCHASE PRICE
43	ELLIS E. NEDER, JR. JANET S. KING	7/11/85	John C. Para	$ 83,600
44	ELLIS E. NEDER, JR.	7/12/85	Frank Green	$ 83,600
45	ELLIS E. NEDER, JR.	7/14/85	Ronald Oberdier	$ 79,000
46	ELLIS E. NEDER, JR.	7/15/85	Herman Gradick	$ 83,600
47	ELLIS E. NEDER, JR.	7/15/85	David Owen	$ 98,900
48	ELLIS E. NEDER, JR. SANDRA McDANIEL	7/19/85	Jerry W. McDaniel	$ 89,900
49	ELLIS E. NEDER, JR.	7/21/85	Michael D. Loyd	$ 89,900

50	ELLIS E. NEDER, JR. MICHAEL J. ARINGTON	7/25/85	Michael and Teresa Arington	$ 69,900
51	ELLIS E. NEDER, JR.	7/29/85	Christopher A. White	$ 85,400
52	ELLIS E. NEDER, JR.	8/1/85	John W. Kerr	$ 83,600
53	ELLIS E. NEDER, JR.	8/1/85	J. Robert Pierce	$ 69,900
54	ELLIS E. NEDER, JR. SANDRA McDANIEL	9/25/85	Janet Miller	$ 84,900
55	ELLIS E. NEDER, JR. SANDRA McDANIEL	10/11/85	Sylvia Sanders	$ 79,000
56	ELLIS E. NEDER, JR. SANDRA McDANIEL	10/11/85	Cheryl Whisnant	$ 79,000
57	ELLIS E. NEDER, JR.	10/15/85	Warren K. Anderson	$ 79,900

58	ELLIS E. NEDER, JR.	10/15/85	Joseph E. Warren	$ 79,900
59	ELLIS E. NEDER, JR.	10/25/85	Donald Tony Moses	$ 84,900
60	ELLIS E. NEDER, JR.	10/25/85	Michael Aziz Ossi	$ 69,900
61	ELLIS E. NEDER, JR.	10/25/85	Gene E. Porter, Jr	$ 75,000

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNTS SIXTY-TWO THROUGH SEVENTY-ONE

Between on or about December 10, 1986 and February 13, 1987, at Jacksonville, in the Middle District of Florida, the defendants set forth below, did knowingly and willfully make and cause to be made materially false statements in a "Deposit Receipt and Purchase and Sale Agreement", in the names of purported purchasers described below, that was submitted to the Security First S & L as part of an application by ELLIS E. NEDER, JR. to obtain a $5,400,000 construction loan for a project known as Southern Grove, with intent to and for the purpose of influencing the action of the Security First S & L, the deposits of which were then insured by the Federal Savings and Loan Insurance Corporation, in that each "Deposit Receipt and Purchase and Sale Agreement" contained false representations that the purported purchaser had paid the amount of money described below to ELLIS E. NEDER, JR. at the execution of the agreement for the purchase of a condominium at Southern Grove, whereas in truth and fact, as the defendants then well knew, the statements were false in that the purchaser did not deposit any money for the purchase of a condominium at Southern Grove:

COUNT	DEFENDANT(S)	DATE	NAME OF PURCHASER IN AGREEMENT	AMOUNT OF MONEY REPRESENTED AS DOWN PAYMENT
62	ELLIS E. NEDER, JR THOMAS C. TURNER MICHAEL J. ARINGTON	12/10/86	Michael J. Arington	$ 7,990
63	ELLIS E. NEDER, JR. THOMAS C. TURNER	12/22/86	Vivian W. Taylor	$ 7,990
64	ELLIS E. NEDER, JR. THOMAS C. TURNER	12/29/86	Howard L. Rundquist	$ 7,990
65	ELLIS E. NEDER, JR. STEVEN A. MOORE	1/25/87	Louis V. Lourcey Joyce C. Lourcey	$ 7,990
66	ELLIS E. NEDER, JR. THOMAS C. TURNER	1/26/87	Michael D. Loyd	$ 7,990

67	ELLIS E. NEDER, JR. STEVEN A. MOORE	2/9/87	Ramona E. Hoskins	$ 8,390
68	ELLIS E. NEDER, JR. STEVEN A. MOORE	2/9/87	John D. Seymour Angela F. Seymour	$ 8,390
69	ELLIS E. NEDER, JR. THOMAS C. TURNER	2/9/87	Christopher A. White	$ 7,990
70	ELLIS E. NEDER, JR. THOMAS C. TURNER	2/10/87	Craig & Sue Waters	$ 7,990
71	ELLIS E. NEDER, JR. THOMAS C. TURNER	2/13/87	Janet E. Davis	$ 7,990

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNT SEVENTY-TWO

Between on or about December 31, 1986 and March 27, 1987, at Jacksonville, in the Middle District of Florida,

ELLIS E. NEDER, JR.
MICHAEL J. ARINGTON

the defendants herein, did knowingly and willfully make and caused to be made a materially false statement in a "Residential Loan Application" to Security First Federal Savings and Loan Association as part of an application by the defendant to obtain a mortgage loan to purchase a condominium at a project known as Southern Grove, with intent to and for the purpose of influencing the action of Security First Federal S&L, the deposits of which were then insured by the Federal Savings and Loan Insurance Corporation, in that MICHAEL J. ARINGTON represented in the "Residential Loan Application" that his gross monthly income (base employment income) was $3,083, whereas in truth and in fact, as MICHAEL J. ARINGTON then well knew, the statement was false in that his gross monthly income (base employment income) in the "Residential Loan Application" had been altered and inflated to $3,083 so the defendant would qualify for a loan from the financial institution.

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNT SEVENTY-THREE

A. INTRODUCTION

Part A of Count One is realleged and incorporated by reference as if set forth fully herein.

B. SCHEME AND ARTIFICE

Beginning on or about January 5, 1985, and continuing to on or about December 11, 1985, at Jacksonville, in the Middle District of Florida, and elsewhere,

THOMAS C. TURNER
TURNER AND FORD, P.A.

the defendants herein, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money, funds, and credits owned by and under the custody and control of Caribank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, by means of false and fraudulent pretenses, representations, and promises.

C. WAYS AND MEANS

1. It was part of said scheme and artifice that the defendants would cause to be filed a mortgage as a lien on real property that was the subject of a land development loan applied for by the defendants.

2. It was further part of said scheme and artifice that the defendants would create a trust to be utilized for the defendants to obtain monies from loan proceeds of a financial institution.

3. It was further part of said scheme and artifice that the defendants would conceal from and not disclose to the financial institution that the mortgage trust document had been created in order for the defendants to obtain monies from loan proceeds.

4. It was further part of said scheme and artifice that the defendants would make application to the financial institution for a land development loan and request that the land development loan be utilized to pay off existing mortgages on the subject property.

5. It was further part of said scheme and artifice that the defendants would assign a mortgage to a trustee and represent to the financial institution that loan proceeds would be paid to the trustee of the mortgage.

6. It was further part of the scheme and artifice that THOMAS C. TURNER would obtain the loan proceeds for land development from the financial institution and execute a Loan Settlement Statement containing false representations that he had disbursed a portion of the loan proceeds to the trustee of the existing mortgage on the real property.

7. It was further part of the scheme and artifice that THOMAS C. TURNER would issue checks to the partners of Mallard Landing Associates, Ltd., (TURNER, John Edgerton, Michael Braren) instead of issuing a check to the trustee as represented to the financial institution.

8. It was further part of the scheme and artifice that THOMAS C. TURNER would misrepresent and make false statements to the financial institution with respect to disbursement of the loan proceeds to the trustee of the existing mortgage.

9. It was further part of the scheme and artifice that the defendants would perform acts and make statements to hide and conceal, and cause to be hidden and concealed, the purpose of the conspiracy and the acts committed in furtherance thereof.

D. EXECUTION OF SCHEME

On or about December 11, 1985 at Jacksonville, in the Middle District of Florida, and elsewhere,

THOMAS C. TURNER
TURNER AND FORD, P.A.

the defendants herein, did knowingly and willfully execute and attempt to execute the scheme and artifice by submitting and causing to be submitted to Caribank a loan settlement statement reflecting that loan proceeds would be disbursed to a trustee of a mortgage on real property whereas the defendants disbursed the loan proceeds to themselves.

In violation of Title 18, United States Code, Sections 1344 and 2.

COUNT SEVENTY-FOUR

On or about December 11, 1985, at Jacksonville, in the Middle District of Florida,

THOMAS C. TURNER

the defendants herein, did knowingly and willfully make a materially false statement in a "Loan Settlement Statement", that was submitted to Caribank as part of an application by the defendants for a $2,658,000 development loan for a project known as Mallard Landing, with intent to and for the purpose of influencing the action of Caribank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, in that the defendants represented in the Loan Settlement Statement that $217,424.64 of the loan proceeds had been disbursed to a trustee for a mortgage on the property, whereas in truth and fact, as the defendants then well knew, the statement was false in that the proceeds were not disbursed to a trustee but instead individual checks were issued in the approximate amount of $72,474 to THOMAS C. TURNER, John Edgerton and Michael Braren.

In violation of Title 18, United States Code, Section 1014 and 2.

COUNT SEVENTY-FIVE

On or about December 6, 1985, at Jacksonville, in the Middle District of Florida,

THOMAS C. TURNER

the defendants herein, did knowingly and willfully make a materially false statement in an estoppel letter which was submitted by the defendants to an attorney for Caribank as part of an application to obtain a $2,658,000 development loan for a project known as Mallard Landing, with intent to and for the purpose of influencing the action of Caribank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, in that said estoppel letter was purportedly signed by Enrique Antonio Puente, purported trustee for a mortgage on the property, concerning the pay-off figure for an existing mortgage on the Mallard Landing property, whereas in truth and fact, as the defendants then well knew, the signature of Enrique Antonio Puente was false and forged.

In violation of Title 18, United States Code, Section 1014 and 2.

COUNT SEVENTY-SIX

On or about December 11, 1985, at Jacksonville, in the Middle District of Florida,

THOMAS C. TURNER

the defendants herein, did knowingly and willfully make a materially false statement in a Satisfaction of Mortgage document which was submitted to an attorney for Caribank as part of the requirements to close a $2,658,000 development loan for a project known as Mallard Landing, with intent to and for the purpose of influencing the action of Caribank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, in that said Satisfaction of Mortgage

was purportedly signed by Enrique Antonio Puente and said document submitted as a legitimate document to support the expenditure of loan proceeds for the payment of a mortgage, whereas in truth and fact, as the defendants then well knew, the document was false in that the signature of Enrique Antonio Puente on the Satisfaction of Mortgage document was false and forged.

In violation of Title 18, United States Code, Section 1014 and 2.

COUNT SEVENTY-SEVEN

A. INTRODUCTION

Part A of Count One is realleged and incorporated by reference as if set forth fully herein.

B. SCHEME AND ARTIFICE

Beginning in or about December, 1987, and continuing to on or about March 16, 1988, at Jacksonville, in the Middle District of Florida, and elsewhere,

ELLIS E. NEDER, JR.
THOMAS C. TURNER

the defendants herein, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud and obtain money, funds, and credits owned by and under the custody and control of the Central Bank of the South, the deposits of which where then insured by the Federal Deposit Insurance Corporation, by means of false and fraudulent pretenses, representations, and promises.

C. WAYS AND MEANS

1. It was part of said scheme and artifice that the defendants would cause to be filed a fictitious mortgage as

a lien on real property that was the subject of a land development loan for which the defendants applied.

2. It was further part of said scheme and artifice that a fictitious promissory note and mortgage deed payable to a trustee would be created to be utilized by the defendants to obtain monies from loan proceeds of a financial institution.

3. It was further part of said scheme and artifice that the defendants would conceal and not disclose to the financial institution that the mortgage payable to a trustee had been created by the defendants to obtain additional monies from loan proceeds of a financial institution.

4. It was further part of said scheme and artifice that the defendants would make application to a financial institution for a land development loan and request that the land development loan be utilized to pay off all existing mortgages on the subject property including the fictitious mortgage created by the defendants.

5. It was further part of said scheme and artifice that the defendants would obtain a commitment letter from the financial institution for a land development loan and condition acceptance of the commitment upon the financial institution disbursing the loan proceeds to pay off existing mortgages on the subject property, including the fictitious mortgage created by the defendants.

6. It was further part of the scheme and artifice that the defendants would perform acts and make statements to hide and conceal, and cause to be hidden and concealed, the purpose of the conspiracy and the acts committed in furtherance thereof.

D. EXECUTION OF SCHEME

On or about March 16, 1988, at Jacksonville, in the Middle District of Florida, and elsewhere,

ELLIS E. NEDER, JR.
THOMAS C. TURNER

the defendants herein, did knowingly and willfully execute and attempt to execute the scheme and artifice by submitting and causing to be submitted to Central Bank of the South a letter conditioning acceptance of a $4,700,000 land development loan upon Central Bank of the South disbursing loan proceeds to pay off all existing mortgages on the property, which, in fact, included a fictitious promissory note and mortgage deed to a trustee in the amount of $280,000 which had been created by the defendants.

In violation of Title 18, United States Code, Sections 1344 and 2.

COUNTS SEVENTY-EIGHT THROUGH EIGHTY-FOUR

A. INTRODUCTION

Part A of Count One is realleged and incorporated by reference as if set forth fully herein.

B. SCHEME AND ARTIFICE

Beginning on or about September 1, 1987, and continuing to on or about March 1, 1988,

ELLIS E. NEDER, JR.
STEVEN A. MOORE
HARVEY M. MANSS
WILLIAM THOMAS FREEMAN, JR.

the defendants herein, knowingly and willfully devised and intended to devise a scheme and artifice to defraud and to

obtain money and property from the United Brotherhood of Carpenters and Joiners of America (hereinafter "Union"), by means of false and fraudulent pretenses, representations, and promises, well knowing that the pretenses, representations and promises were false and fraudulent.

C. WAYS AND MEANS

1. It was a part of the scheme and artifice that the defendants would submit and cause to be submitted to the Union to obtain construction loan proceeds for a project known as Reddie Point, false and fraudulent requisitions, draw requests, and supporting documentation which contained costs, expenses, and charges of vendors for projects other than Reddie Point and for work never performed.

2. It was further part of the scheme and artifice that ELLIS E. NEDER, JR. would sign a document entitled "form of Requisition" falsely certifying that the amount of expenses detailed were legitimate expenses incurred by the defendants on the Reddie Point project.

3. It was further part of the scheme and artifice that HARVEY M. MANNS, architect on the Reddie Point project, would approve the requisitions and draw requests, falsely certify that the itemized list of invoices and back-up data were in accordance with accepted standards of the architectural profession and reasonable, and submit said certification of the architect to the Union as part of the requisition and draw requests to obtain construction loan proceeds for the Reddie Point project.

4. It was further part of the scheme and artifice that WILLIAM THOMAS FREEMAN, JR., construction manager for the Reddie Point project, would sign and approve a Management Constructor's, Inc. "Construction Management Invoice" falsely detailing services and costs of

vendors at the Reddie Point project for submission of said invoice to the Union as part of the requisitions and draw requests to obtain construction loan proceeds.

5. It was further part of the scheme and artifice that HARVEY M. MANSS would submit to the Union letters approving and recommending payment of draw requests of Management Constructor's, Inc.

6. It was further part of the scheme and artifice that STEVEN A. MOORE would solicit invoices from vendors who had performed services on other NEDER projects and cause those invoices to be submitted to the Union as part of the draw requests for the Reddie Point project.

7. It was further part of the scheme and artifice that the defendants would receive construction loan proceeds via wire transmissions from a Union account in Indianapolis, Indiana, wired to the account of Reddie Point, Ltd. at Tucker State Bank of Jacksonville, Florida.

8. It was further part of the scheme and artifice that the defendants would perform acts and make statements to hide and conceal, and cause to be hidden and concealed, the purpose of the conspiracy and the acts committed in furtherance thereof.

D. TRANSMISSIONS

On or about the dates listed below, at Jacksonville, in the Middle District of Florida,

ELLIS E. NEDER, JR.
STEVEN A. MOORE
HARVEY M. MANSS
WILLIAM THOMAS FREEMAN, JR

the defendants herein, for the purpose of executing and attempting to execute the aforesaid scheme and artifice did

transmit and cause to be transmitted in interstate commerce, from an account of the Union in Indianapolis, Indiana to the account of Reddie Point, Ltd., in Jacksonville, Florida, by means of wire communications, certain signs, signals, and sounds, that is, the wire transfers of monies representing construction loan proceeds on the requisition/draw requests as described below:

COUNT	DATE	REQUISITION/ DRAW NUMBER	AMOUNT
78	9/10/87	#1	$601,637.95
79	10/2/87	#2	$946,677.35
80	11/12/87	#3	$821,056.09
81	12/18/87	#4	$889,402.00
82	1/21/88	#5	$669,875.00
83	2/17/88	#6	$729,781.00
84	3/17/88	#7	$804,595.50

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT EIGHTY-FIVE

1. On or about the 16th day of June, 1988, at Jacksonville, in the Middle District of Florida,

MARY C. MILLIS

defendant herein, having duly taken an oath before Frank M. Odom, a competent officer and person, that is, a Special Agent of the Department of the Treasury, Internal Revenue Service, during an investigation duly authorized by the Department of the Treasury, Internal Revenue Service, a case in which Title 26, United States Code, Section 7602 authorizes an oath to be administered, that she would testify truly, did knowingly, willfully, and contrary to said oath state material matter which she did not believe to be true, that is to say:

2. At the date and place aforesaid, the Department of the Treasury, Internal Revenue Service, was conducting an investigation into the acquisition of real property by ELLIS E. NEDER, JR. through various corporations and to determine if ELLIS E. NEDER, JR. had violated federal income tax laws. It was material to the aforesaid investigation to determine whether MARY C. MILLIS had ever heard of or represented Islands of San Sebastian, Inc., whether she was ever an officer or director of said corporation, or if she had ever signed any documents on behalf of the corporation for ELLIS E. NEDER, JR.

3. At the date and place aforesaid in paragraph 1, MARY C. MILLIS provided an affidavit to the special agent of the Internal Revenue Service, and then and there being under oath as aforesaid, testified falsely before the special agent with respect to the aforesaid material matter as follows:

> "I have never heard of or represented any company or corporation named 'Islands of San Sebastian Inc.' or 'San Sebastian LTD.' nor have I ever been an officer or director for them. If my name appears on any documents or records reflecting these companies, it was done so without my knowledge."

4. The aforesaid statements of MARY C. MILLIS, as she then and there well knew and believed, were false in that:

a. On December 3, 1985, the defendant, MARY C. MILLIS, signed a "Deposit Receipt and Purchase and Sale Agreement" as M. C. Rozier, President of Islands of San Sebastian Corp. agreeing to sell real property located in St. John's County to ELLIS E. NEDER, JR. for a purchase price of $1,125,000 falsely acknowledging receipt of $400,000 from ELLIS E. NEDER, JR.

b. On December 19, 1985, the defendant, MARY C. MILLIS, signed the Articles of Incorporation for said corporation using the name M. C. Rozier representing she was the sole director, subscriber (incorporator) and registered agent of the corporation. The defendant also signed a certificate acknowledging that she was the agent authorized to accept service of process within the State of Florida.

c. On January 10, 1986, the defendant, MARY C. MILLIS, signed a Warranty Deed, an owner's affidavit, and a Settlement Statement using the name M. C. Rozier, President of Islands of San Sebastian, Inc. to transfer real property to a partnership of ELLIS E. NEDER, JR.

All in violation of Title 18, United States Code, Section 1621.

COUNT EIGHTY-SIX

On or about December 4, 1987, at Jacksonville, in the Middle District of Florida,

ELLIS E. NEDER, JR.

the defendant herein, a resident of the Middle District of Florida, did knowingly and willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for the calendar year 1985, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Director, Internal Revenue Service Center, at Atlanta, Georgia, which return the defendant did not believe to be true and correct as to every material matter, in that the said return reported a total income of $53,625 for said calendar year, whereas, as the defendant then well knew and believed, he had received additional income in the approximate amount of $1,361,361.79 and had not reported such income in his tax return.

In violation of Title 26, United States Code, Section 7206(1).

COUNT EIGHTY-SEVEN

On or about September 1, 1988, at Jacksonville, in the Middle District of Florida,

ELLIS E. NEDER, JR.

the defendant herein, a resident of the Middle District of Florida, did knowingly and willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for the calendar year 1986 which was verified by a written declaration that it was made under the penalties of perjury and was filed with the

Director, Internal Revenue Service Center, at Atlanta, Georgia, which said return the defendant did not believe to be true and correct as to every material matter in that the said tax return reported total income of minus $980,377 for said calendar year, whereas, as the defendant then well knew and believed, he had received additional income in the amount of approximately $4,268,767.83 and had not reported such income in his tax return.

In violation of Title 26, United States Code, Section 7206(1).

COUNT EIGHTY-EIGHT

On or about April 15, 1987, at Jacksonville, in the Middle District of Florida,

HORACE MARSH

the defendant herein, a resident of the Middle District of Florida, did knowingly and willfully make and subscribe a joint U.S. Individual Income Tax Return, Form 1040, for the calendar year 1986 which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Director, Internal Revenue Service Center, at Atlanta, Georgia, which said return the defendant did not believe to be true and correct as to every material matter in that the said return reported a joint total income of $69,042.37 whereas, as the defendant then well knew and believed, additional income in the amount of approximately $33,648 had been received and had not been reported in said joint tax return.

In violation of Title 26, United States Code, Section 7206(1).

COUNT EIGHTY-NINE

A. INTRODUCTION

1. Part A of Count One is realleged and incorporated by reference as if set forth fully herein.

2. At all times material to this indictment, ELLIS E. NEDER, JR.; Neder Properties, Inc.; First Frontier, Inc.; JBA, Inc.; AMH, Inc.; First Prospector, Inc.; Islands of San Sebastian, Inc.; T.E.A.E., Inc.; RBB, Inc.; Pt. Reddie, Inc.; E.A.T. Investors Equity, Inc.; The View, Inc.; Management Constructors, Inc.; and Reddie Point, Ltd were associated in fact and constituted an enterprise as defined in Title 18, United States Code, Section 1961(4).

3. At all times material to this indictment, the enterprise conducted a scheme and artifice to defraud and obtain, by false and fraudulent pretenses, promises, and representations, monies from federally insured financial institutions and other lenders.

4. At all times material to this indictment, Neder Properties, Inc., registered under the laws of the State of Florida, was utilized by the enterprise to assist in the acquisition and development of real properties by means of fraudulent land acquisition and land development loans from lenders. Neder Properties, Inc. was administratively dissolved by the State of Florida on November 4, 1988.

5. At all times material to this indictment, the defendant, ELLIS E. NEDER, JR. made applications for fraudulent land acquisition and development loans from various lenders.

6. At all times material to this indictment, the defendant, THOMAS C. TURNER, was the attorney for the enterprise and assisted the enterprise in the drafting and creation

of various legal documents so that the enterprise could obtain land acquisition and land development financing.

7. At all times material to this indictment, the defendant, HORACE MARSH, was the incorporator, director, and officer of many corporations that purchased real property on behalf of the enterprise and transferred the same real property to the enterprise at inflated prices. Defendant HORACE MARSH executed various purchase and sale contracts, deeds, and loan settlement statements to assist the enterprise in fraudulently obtaining funds from lenders.

8. At all times material to this indictment, the defendant, STEVEN A. MOORE, was an officer of Neder Properties, Inc., a corporation created to assist the enterprise in the development of properties.

9. At all times material to the indictment, the defendant, HARVEY M. MANSS, was an architect for the enterprise and assisted the enterprise in obtaining monies from lenders due to his certifications of documents as an architect.

10. At all times material to this indictment, the defendant, JANET S. KING, was the marketing director for Neder Properties, Inc. and assisted the enterprise in obtaining fraudulent land development loans from lenders. KING received monies from the enterprise for her activities that assisted the enterprise until approximately July 1987.

11. At all times material to this indictment, the defendant, SANDRA McDANIEL, was a realtor who assisted the enterprise in obtaining fraudulent land development loans from lenders.

12. At all times material to this indictment, the defendant, ROY F. SMITH, JR. was an appraiser who would provide to the enterprise inflated appraisals of real property to assist the enterprise in obtaining fraudulent loans from lenders.

13. At all times material to this indictment, the defendant, ROY F. SMITH, JR. AND ASSOCIATES, INC., was a real estate appraisal firm which received fees from the enterprise for inflated appraisals performed by its officers and employees for the enterprise.

14. At all times material to this indictment, the defendant, PETER A. FOGG, was a staff appraiser for ROY F. SMITH, JR. AND ASSOCIATES, INC. who would produce inflated appraisals of real property to assist the enterprise in obtaining fraudulent loans from lenders.

15. At all times material to this indictment, the enterprise conducted business in the State of Florida through various corporations and individuals who would locate real property for acquisition and development. The enterprise would arrange to have a corporation receive a broker's commission upon the closing of the transfer of real property to a partnership of ELLIS E. NEDER, JR. and would obtain its fees from loan proceeds obtained from federally insured financial institutions and other lenders located inside and outside the State of Florida. Loan proceeds from lenders would be provided to the enterprise by interstate and intrastate wire transmissions. The enterprise would mail documents out of the State of Florida for signature and cause them to be returned to the State of Florida as part of various loan and real estate transactions. The enterprise would provide marketing advertisements for various development projects to potential purchasers outside the State of Florida. The enterprise would send correspondence and documents from Jacksonville in the State of Florida to locations outside the State of Florida in support of its attempts to obtain land acquisition and land development loans. Fraudulent documents in support of various loan requests were sent from the State of Florida to the states of Arizona, New York, and to Washington, D.C., and loan proceeds that were fraudulently obtained were

transmitted from outside the State of Florida to the enterprise in the State of Florida.

B. CHARGE

From in or about May, 1984 to in or about May, 1988, in the Middle District of Florida and elsewhere, the defendants

ELLIS E. NEDER
THOMAS C. TURNER
HORACE MARSH
STEVEN A. MOORE
ROY F. SMITH, JR.
ROY F. SMITH, JR. & ASSOCIATES, INC.
PETER A. FOGG

being persons employed by and associated with the enterprise described in paragraph A.2., above, which was engaged in and the activities of which affected interstate commerce, did unlawfully, knowingly, and willfully conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity consisting of violations of Title 18, United States Code, Section 1341 (mail fraud) and Title 18, United States Code, Section 1343 (wire fraud), as set forth below:

PATTERN OF RACKETEERING

RACKETEERING ACT	
1	Count 21 which is realleged and incorporated by reference as if fully set forth herein.
2	Count 22 which is realleged and incorporated by reference as if fully set forth herein.
3	Count 23 which is realleged and incorporated by reference as if fully set forth herein.
4(a)	Count 24 which is realleged and incorporated by reference as if fully set forth herein.
4(b)	Count 31 which is realleged and incorporated by reference as if fully set forth herein.
5	Count 25 which is realleged and incorporated by reference as if fully set forth herein.

6	Count 26 which is realleged and incorporated by reference as if fully set forth herein.
7	Count 27 which is realleged and incorporated by reference as if fully set forth herein.
8	Count 28 which is realleged and incorporated by reference as if fully set forth herein.
9	Count 29 which is realleged and incorporated by reference as if fully set forth herein.
10	Count 30 which is realleged and incorporated by reference as if fully set forth herein.
11	Count 32 which is realleged and incorporated by reference as if fully set forth herein.
12	Count 33 which is realleged and incorporated by reference as if fully set forth herein.

13	Count 34 which is realleged and incorporated by reference as if fully set forth herein.
14	Count 35 which is realleged and incorporated by reference as if fully set forth herein.
15(a)	Count 78 which is realleged and incorporated by reference as if fully set forth herein.
15(b)	Count 79 which is realleged and incorporated by reference as if fully set forth herein.
15(c)	Count 80 which is realleged and incorporated by reference as if fully set forth herein.
15(d)	Count 81 which is realleged and incorporated by reference as if full set forth herein.

15(e)	Count 82 which is realleged and incorporated by reference as if full set forth herein.
15(f)	Count 83 which is realleged and incorporated by reference as if full set forth herein.
15(g)	Count 84 which is realleged and incorporated by reference as if full set forth herein.

In violation of Title 18, United States Code, Sections 1962(c) and 2.

COUNT NINETY

1. The allegations contained in Part A, paragraphs one through fifteen of Count Eighty-Nine are realleged in this count and are incorporated by reference as if fully set forth herein.

2. From in or about May, 1984 to in or about May 1988, in the Middle District of Florida and elsewhere, the defendants,

ELLIS E. NEDER, JR.
THOMAS C. TURNER
HORACE MARSH
STEVEN A. MOORE
HARVEY M. MANSS
JANET S. KING
SANDRA McDANIEL
ROY F. SMITH, JR.
ROY F. SMITH, JR. & ASSOCIATES, INC.
PETER A. FOGG

being persons employed by and associated with the above-described enterprise, which was engaged in and the activities of which affected interstate and foreign commerce, unlawfully and willfully did combine, conspire, confederate, and agree with each other, and with persons known and unknown to the Grand Jury, to commit an offense against the United States, to wit: to violate Title 18, United States Code, Section 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity.

3. It was part of the conspiracy that the defendants and their co-conspirators would commit acts of racketeering activity consisting of Racketeering Acts Number 1

through 15 of Part B, of Count Eighty-Nine, which are realleged and incorporated by reference herein.

4. It was further part of the conspiracy that each defendant agreed that two or more acts of racketeering activity would be committed in the conduct of the affairs of the enterprise.

5. It was further part of the conspiracy that the defendants and other persons to grand jury known and unknown, did combine and confederate to establish, and did in fact establish, an enterprise for the purpose of fraudulently obtaining land acquisition, land development, and construction loans from various lenders and the submission of false and fraudulent documents and statements in support thereof. It was further part of the conspiracy that the defendants and others known and unknown to the grand jury, did knowingly and willfully confederate, affiliate, and associate with said enterprise for the purpose of effecting the criminal objectives thereof.

6. Part C, Section I, Land Acquisition Fraud, paragraphs one through thirteen, Section II, Land Development Fraud, paragraphs fourteen through twenty-two, Section III, Construction Draw Requests Fraud, paragraphs twenty-three through thirty, and Section IV, Concealment, paragraph thirty-one, of Count One are realleged and incorporated by reference as if set forth fully herein.

OVERT ACTS

In furtherance of the conspiracy and in order to effect the object thereof, the defendants and their co-conspirators committed and caused to be committed the following acts, among others:

Overt Acts number 1-174, as alleged in Part D of Count one, are realleged and incorporated by reference as if set forth fully herein.

All in violation of Title 18, United States Code, Section 1962(d).

FORFEITURE

A. The allegations of Counts Eighty-Nine and Ninety of this indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to the provisions of Title 18, United States Code, Section 1963.

B. The defendants, ELLIS E. NEDER, JR., THOMAS C. TURNER, HORACE MARSH, STEVEN A. MOORE, HARVEY M. MANSS, JANET S. KING, SANDRA McDANIEL, ROY F. SMITH, JR., ROY F. SMITH, JR. & ASSOCIATES, INC., and PETER A. FOGG, have interests they acquired and maintained in violation of Title 18, United States Code, Section 1962, all of which interests, in whatever forms, wherever located, and in whatever names held, are therefore subject to forfeiture to the United States of America pursuant to Title 18, United States Code, Section 1963(a)(1).

C. The defendants, ELLIS E. NEDER, JR., THOMAS C. TURNER, HORACE MARSH, STEVEN A. MOORE, HARVEY M. MANSS, JANET S. KING, SANDRA McDANIEL, ROY F. SMITH, JR., ROY F. SMITH, JR. ASSOCIATES, INC., and PETER A. FOGG, have interests in, securities of, claims against, and property and contractual rights affording sources of influence over an enterprise, more particularly described in Part A, paragraph 2 of Count Eighty-Nine, which they established, operated, controlled, conducted, and participated in the conduct of, in violation of Title 18, United States Code, Section 1962, thereby making all such interests, securities, claims, and property and contractual rights, in whatever forms, wherever located, and in whatever names held, subject to forfeiture to the United States of America pursuant to Title 18, United States Code, Section 1963(a)(2).

D. The defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, HORACE MARSH, STEVEN A. MOORE, HARVEY M. MANSS, JANET S. KING, SANDRA McDANIEL, ROY F. SMITH, JR., ROY F. SMITH, JR. & ASSOCIATES, INC., and PETER A. FOGG, have property constituting and derived from proceeds which they obtained, directly and indirectly, from racketeering activity in violation of Title 18, United States Code, Section 1962, thereby making all such property, in whatever form, wherever located, and in whatever names held, subject to forfeiture to the United States of America pursuant to Title 18, United States Code, Section 1963(a)(3).

E. The interests subject to forfeiture to the United States of America pursuant to paragraphs A, B, C, and D above include, but are not limited to:

1. $273,000 obtained from Duval Federal S & L on August 30, 1984 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, HORACE MARSH, ROY F. SMITH, JR., ROY F. SMITH, JR. & ASSOCIATES, INC. and PETER A. FOGG.

2. $68,000 obtained from Duval Federal S & L on October 9, 1984 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, HORACE MARSH, ROY F. SMITH, JR., ROY F. SMITH, JR. & ASSOCIATES, INC. AND PETER A. FOGG.

3. $822,500 obtained from Security First S & L on January 15, 1985 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, and HORACE MARSH.

4. $140,238 obtained from Security First S & L on January 15, 1985 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, and HORACE MARSH.

5. $525,000 obtained from Financial Federal S & L of Dade County on August 9, 1985 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, and HORACE MARSH.

6. $1,186,750 obtained from Bancsmiths/Baltimore Federal on June 18, 1985 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, HORACE MARSH, ROY F. SMITH, JR., ROY F. SMITH, JR. & ASSOCIATES, INC. and PETER A. FOGG.

7. $1,125,000 obtained from Caribank on October 31, 1985 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, and HORACE MARSH.

8. $217,500 obtained from Caribank on February 17, 1986 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, and HORACE MARSH.

9. $847,500 obtained from Carteret S & L on January 24, 1986 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, HORACE MARSH, ROY F. SMITH, JR, ROY F. SMITH, JR. & ASSOCIATES, INC. and PETER A. FOGG.

10. $1,177,500 obtained from Caribank on January 10, 1986 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, ROY F.

SMITH, JR., ROY F. SMITH, JR. & ASSOCIATES, INC. and PETER A. FOGG.

11. $2,350,000 obtained from Caribank on April 29, 1986 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, and HORACE MARSH.

12. $3,000,000 obtained from Greyhound on September 5, 1986 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, HORACE MARSH, ROY F. SMITH, JR., ROY F. SMITH, JR. & ASSOCIATES, INC. and PETER A. FOGG.

13. $6,000,000 obtained from the Union on November 7, 1986 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, and HORACE MARSH.

14. $4,150,000 obtained from Amerifirst S & L during and between 1985 and 1988 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, STEVEN A. MOORE, JANET S. KING, and SANDRA McDANIEL.

15. $2,000,000 obtained from Security First S & L during and between 1985 and 1987 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, STEVEN A. MOORE, JANET S. KING, and SANDRA McDANIEL.

16. $2,200,000 obtained from the Union on July 30, 1987 is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, HORACE MARSH, and HARVEY M. MANSS.

17. $601,637.95 obtained from the Union on September 10, 1987 is forfeitable from defendants ELLIS E. NEDER, JR., STEVEN A. MOORE and HARVEY A. MANSS.

18. $946,677.35 obtained from the Union on October 2, 1987 is forfeitable from defendants ELLIS E. NEDER, JR., STEVEN A. MOORE and HARVEY A. MANSS.

19. $821,056.09 obtained from the Union on November 12, 1987 is forfeitable from ELLIS E. NEDER, JR., STEVEN A. MOORE and HARVEY A. MANSS.

20. $889,402.00 obtained from the Union on December 18, 1987 is forfeitable from defendants ELLIS E. NEDER, JR., STEVEN A. MOORE and HARVEY A. MANSS.

21. $669,875.00 obtained from the Union on January 21, 1988 is forfeitable from defendants ELLIS E. NEDER, JR., STEVEN A. MOORE and HARVEY A. MANSS.

22. $729,781.00 obtained from the Union on February 17, 1988 is forfeitable from defendants ELLIS E. NEDER, JR., STEVEN A. MOORE and HARVEY A. MANSS.

23. $804,595.00 obtained from the Union on March 17, 1988 is forfeitable from defendants ELLIS E. NEDER, JR., STEVEN A. MOORE and HARVEY A. MANSS.

24. $29,163.28 in real estate fees paid to defendant SANDRA McDANIEL on June 18, 1985 from loan proceeds from Baltimore Federal/Bancsmiths is

forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, HORACE MARSH, SANDRA McDANIEL, ROY F. SMITH, JR., ROY F. SMITH, JR. & ASSOCIATES, INC., and PETER A. FOGG.

25. $58,558 in real estate fees paid to defendant SANDRA McDANIEL on September 5, 1986 from loan proceeds from Greyhound is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, HORACE MARSH, SANDRA McDANIEL, ROY F. SMITH, JR., ROY F. SMITH, JR. & ASSOCIATES, INC., and PETER A. FOGG.

26. $12,461.40 in real estate fees paid to defendant MARY C. MILLIS on October 31, 1985 from loan proceeds from Caribank on the Beach Harbour I transaction is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, and HORACE MARSH.

27. $13,846.00 in real estate fees paid to Neder Properties, Inc. and given on October 31, 1985 to defendant MARY C. MILLIS from loan proceeds from Caribank on the Beach Harbour I transaction is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, and HORACE MARSH.

28. $7,500 in real estate fees paid to Neder Properties, Inc. on February 17, 1986 from loan proceeds from Caribank on the Beach Harbor II transaction is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, and HORACE MARSH.

29. $16,000 in real estate fees paid to Neder Properties, Inc. and given to defendant MARY C. MILLIS on January 10, 1986 from the loan proceeds

from Caribank is forfeitable from defendants ELLIS E. NEDER, JR., THOMAS C. TURNER, ROY F. SMITH, JR., ROY F. SMITH, JR. & ASSOCIATES, INC. and PETER A. FOGG.

30. $52,725 in real estate fees paid to Neder Properties, Inc. from loan proceeds from Caribank is forfeitable from defendant ELLIS E. NEDER, JR.

31. $34,532.62 in real estate fees paid to Neder Properties, Inc. from loan proceeds from Caribank is forfeitable from defendant ELLIS E. NEDER, JR.

32. 1984 Porsche 944, vehicle identification number WP0AA0942EN457524, purchased by ELLIS E. NEDER, JR. with loan proceeds is forfeitable from defendant ELLIS E. NEDER, JR.

33. 1979 BMW, vehicle identification number 5448011, purchased by ELLIS E. NEDER, JR. with loan proceeds is forfeitable from defendant ELLIS E. NEDER, JR.

34. 1987 Jeep, vehicle identification number IJCNJ15U5HT178886, purchased by ELLIS E. NEDER, JR. with loan proceeds is forfeitable from defendant ELLIS E. NEDER, JR.

35. 1985 Porsche, vehicle identification number WP0AA0940FN455417, purchased by ELLIS E. NEDER, JR. with loan proceeds is forfeitable from defendant ELLIS E. NEDER, JR.

36. $33,648 defendant HORACE MARSH received from defendant ELLIS E. NEDER, JR. obtained from loan proceeds is forfeitable from defendant HORACE MARSH.

37. $3,764.25 worth of jewelry more particularly described as a Ladies Omega watch purchased by defendant ELLIS E. NEDER, JR. from loan proceeds on December 3, 1987 is forfeitable from defendant ELLIS E. NEDER, JR.

38. $2,045.00 worth of jewelry more particularly described as Dea and Sapp earrings, two music boxes and a Mont Blanc pen purchased by defendant ELLIS E. NEDER, JR. from loan proceeds on December 24, 1987 is forfeitable from defendant ELLIS E. NEDER, JR.

39. $80,060.01 worth of furniture and furnishings obtained by defendant ELLIS E. NEDER, JR. from loan proceeds during and between January 25, 1985 and July 13, 1987 is forfeitable from defendant ELLIS E. NEDER, JR.

40. $24,250 in appraisal fees paid to defendants ROY F. SMITH, JR. & ASSOCIATES, INC. by defendant ELLIS E. NEDER, JR. is forfeitable from defendants ROY F. SMITH, JR., ROY F. SMITH, JR. & ASSOCIATES, INC., and PETER A. FOGG.

A TRUE BILL

/s/ Jamise D. Perdue
FOREMAN

ROBERT W. GENZMAN
United States Attorney

/s/ Stephen M. Kunz
STEPHEN M. KUNZ, Deputy Managing
Assistant United States Attorney

/s/ Curtis Fallgatter
CURTIS S. FALLGATTER, Managing
Assistant United States Attorney

No. 91-175-CR-J-16

UNITED STATES DISTRICT COURT

MIDDLE *District of* FLORIDA
JACKSONVILLE *Division*

THE UNITED STATES OF AMERICA
vs.
ELLIS E. NEDER, JR.; THOMAS C. TURNER; TURNER AND FORD, P.A.; HORACE MARSH; STEVEN A. MOORE; HARVEY M. MANSS; WILLIAM THOMAS FREEMAN, JR.; JANET S. KING; SANDRA McDANIEL; MARY C. MILLIS; MICHAEL J. ARINGTON; ROY F. SMITH, JR.; ROY F. SMITH, JR. & ASSOCIATES, INC.; PETER A. FOGG

INDICTMENT

18 U.S.C.	371; 1344, 2; 1014, 2; 1341, 2; 1343, 2; 1621; 1962(c), 2; 1962 (d)
26 U.S.C.	7206(1)

A true bill

/s/ Jamise D. Perdue
Foreperson

Filed in open court this 23rd day of August A.D. 1991
/s/ Leslie E. Harney
Deputy Clerk

Bail, $

[DEFENDANT'S OPENING STATEMENT TO THE JURY]

[Transcript Volume 1]

[Tr. 84] MR. FALLIS: May it please the Court, Mr. Kunz, ladies and gentlemen of the jury.

Mr. Kunz in his opening statement told you what he thought this case was about. And he told you that this case was about one thing and one thing only, and that's greed. Well, ladies and gentlemen, we'll agree that the evidence will support that this case is about greed. But this case is about a couple of other things besides greed. It's about ambition, incompetence, and greed. However, the evidence will show that those three characteristics, ladies and gentlemen, were not monopolized by Ellis Neder. There was a lot of incompetence in this case.

You heard about lending institutions loan money. You heard about greed, ladies and gentlemen. It was an enormous amount of greed, the evidence will show, on the part of the alleged victims, the lending institutions in this case. And the incompetence is insurmountable. The ambition? Yes. A great deal of ambition, which you'll find out in the course of this trial is not a crime.

You heard a lot of talk about money being lost, money being exchanged. It almost sounds like a civil case. Make no mistake about this, ladies and gentlemen. This is not a civil case about money. This is a criminal case about liberty. Obviously, the case is about Ellis Neder.

[Tr. 85] Who is Ellis Neder? Ladies and gentlemen, you'll know Ellis Neder better than anyone else by the end of this trial. And I believe the evidence will support that. The important thing is who is Ellis Neder in 1984? Well, he was a local attorney, an attorney who practiced mostly personal injury law, not real estate law. He knew nothing about real estate, for

all practical purposes. He was also a forty-year-old man who had a successful practice, a very reputable attorney. Represented some very, very important insurance firms as a defense lawyer.

However, he had reached a point in his life, like many people do, that he was tired. He had done what he's been doing for a number of years, and he had been successful at it. He had a net worth of slightly over a million dollars at that time, and never had any problems.

However, he himself was tired. Some people would say it was the mid-life crisis. Some would say it's burn-out. It doesn't matter. He wanted a change in his life. He had recently been divorced, which also made his life a little more empty. Although he was technically given joint custody of his children, his children both lived with mom away from him, and he was alone.

Well, he was also a very ambitious man. And for ambitious people who are burnt out, just dropping out is not the way to go. They want to continue. They're [Tr. 86] driven. But to make their lives more enjoyable, they've got to find something that they find more enjoyable and work as hard as they have to. You'll hear testimony about that.

Well, what did Ellis Neder do? He would go home at night, realize there's a void in his life. He wanted to make some change, yet he had responsibilities. He'd put on the T.V., read newspapers, and sometimes watch these cable programs where some real estate person gets up there and tells you how you can make a fortune in real estate and how exciting it is. Some issue tapes, books, and "how to's," all very legitimate and legal things.

He would read *The Wall Street Journal*, *The New York Times*, saying, "This is 1984. The place to be right now is real

estate. It's exciting." More specifically, he read that the best real estate that you can possibly ever invest in as a developer or as a purchaser is waterfront. And it makes sense. There's only X amount of waterfront in the United States of America, be it ocean, be it river, be it lake. And all of that property, because it's such a limited resource, had an enormous amount of value or potential value, value that wasn't realized by the people who owned it. Some people, yes, were sitting on very valuable real estate, and they didn't know it, because they were close to the water.

[Tr. 87] Well, Mr. Neder said, "Water? I'm in Jacksonville, Florida. There's nothing but water around here. We've got the Intracoastal. We've got a river. We've got an ocean. Now, if I'm sitting on top of a good opportunity and I want to make a change in my life, I don't have to leave. This is where to go."

And he decided that this is what he was going to do. He was going to change his life, ease out of law -- but personal injury law again -- and go into real estate. Now, real estate to him wasn't anything that was so remote, because his dad was in real estate. Although Ellis Neder never was in business with his dad, but as a child his dad provided a pretty decent living for them.

And he says, "Well, you know, I did pick up a few tips, but mostly from selling." He said, "You know something? I'm probably a good salesman, too. I've been a successful trial lawyer. Sometimes people make that analogy. If you can do that, maybe I can sell, too." And he said, "I think that's what my potential is. That's what I'll do."

He took some courses. He heard about things called equity funding. New concepts. He heard about something which, ladies and gentlemen, is not a negative thing, as the evidence will show, called land flipping. Land flipping, ladies

and gentlemen, you will find, and we will [Tr. 88] have people come and testify, experts to tell you, is not illegal. It's in the textbooks. Go to UNF. Take a course is real estate. It's a perfectly acceptable method of dealing in real estate. All it means is that you found a piece of property that's worth more than the asking price, and you can turn around and sell that property at a fair market value, if you can support it with the proper appraisals, and you get a loan on it. It's absolutely nothing illegal about that.

The prosecutor made you believe that this was something clandestine, some kind of a con, some kind of a scam. But it's not. You will hear experts. Don't forget what the prosecutor told you in opening and what I tell you, for that matter, is not evidence. You'll get the evidence right from there (indicating) and you will evaluate it.

So what did Mr. Neder do? He said, "This is what I want to do." And he had limited sources at that time. And he said, "I remember reading this and reading that. Now what's the next step? Find myself a real estate . . ." -- he found a piece of property that he later named Rose Creek. It's on a creek. He didn't start out on the ocean, ladies and gentlemen. He started with a small project.

And he said, "I'll apply those principles that I've [Tr. 89] learned called land flipping. But just to make sure that this information is true, let me find a real estate lawyer so I know what I'm doing is proper. Not from some salesman on T.V. or something I real in a book or in a newspaper. Because who knows? Maybe the laws are different around the United States.

So he did that. He went to go see a man named Robert Ford. Robert Ford, as the evidence will tell you, was a partner of a man called Thomas Turner, a man who the government told you you'd be hearing some evidence about.

Well, the day he went to see Robert Ford, Robert Ford was too busy, and he saw Tom Turner instead. He said, "Tom, this is what I plan on doing. I found this piece of property. I know I can have it for a lot less than what I think it's worth and what the real estate people tell me it's worth. However, I haven't got all of the money to develop this. Can I have it appraised, and if it comes out to be more and my suspicions are true, can I form a nominee corporation to buy it?" And that again, ladies and gentlemen, is not illegal.

You'll hear testimony that Walt Disney did that all around Orlando. That's how he bought up Orlando before anybody realized it was being bought up by nominee corporations. He said, "Can I do that?" He said, "Yeah. Let me think about it."

[Tr. 90] He came back and he said, "You know, I think it can be done. But, you know, I know enough about the law..." -- now, whether he did or he didn't, only you'll judge. "However, maybe you need to talk to an accountant."

So Ellis Neder said, "Sure. I'd better talk to an accountant, too, because what good is it if I make a great buy and then I've got to pay taxes and give it all back to the government?"

Nothing illegal about that. And you'll hear testimony that tax avoidance is not illegal. Tax evasion is and not tax avoidance. People make millions of dollars consulting people on how to avoid taxes. Nothing immoral and nothing illegal about it.

So he went to Tom Brooks, an excellent, reputable certified public accountant. And he said, "Ellis, I'll tell you what. You can do what you're going to do. Form your nominee corporations. As a matter of fact, a case that just came out with this was tested by the IRS, and they say you can.

But whatever you do with those nominee corporations, whatever excess proceeds you get, don't deposit it into the nominee corporation accounts. Because then you will realize a tax. But if you just take that money and not activate that account and put it in your own account, you will not have to pay any taxes or realize any consequences until the project is finished after you start [Tr. 91] to sell the units. That's when you realize the tax."

And he explained to him, and I believe he'll explain to you, that it's much like -- and I cannot be as eloquent and as technical perhaps as the government in this matter, but I'll reduce the -- he told him something to the effect, "Look. It's the same thing as if you take a second mortgage on your house. I mean, you maybe owe 100,000 on your house. Your house is worth 200,000 and you take $50,000 extra. You can do whatever you want with that money. That's not a profit. You owe that money."

See, that's the difference. It's not a profit because that money is still owed. Profit is money that you've earned and you don't owe anything on it. You can do what you want with it. He said, "Fine."

So he went to his first closing. And that's exactly what he did. We're not going to sit here, ladies and gentlemen, and tell you that some of the things the government said happened didn't happen. Of course, they did. Don't forget, this is a criminal court, not a civil court. The government is going to have to prove to you that this happened with the criminal intent of defrauding. That's different. Much different. And that will come later on in the trial when the Judge gives you the instructions on the law.

However, there was no, absolutely no intent to [Tr. 92] defraud anybody. Now, there were some questionable calls. True, some of the lenders said to Mr. Neder's attorney, Mr.

Tom Turner, "we need certain affidavits to show that this transaction -- that Mr. Neder is not a corporate member of the nominee corporation that bought it and that sort of thing and that he didn't share in any of the profits of the corporation."

So what did Mr. Neder do? He goes to his ex-firm in good faith -- you'll learn about good faith, ladies and gentlemen, later on, too, which is a recognized criminal defense. He said, "Look. I'm getting a little scared now. Okay? I mean, I like the concept. You tell me it's okay. My accountant tells me to do it this way. However, what are we going to do here?"

He said, "Ellis, don't worry about it," he said. "That corporation didn't make any money, and you had somebody else who was the corporate head, either Mr. Marsh or someone else. So you can answer that honestly."

He says, "Are you sure?"

"Yes, I'm sure."

He followed his advice.

Now, I said there was some ambition. Certainly that's ambition.

Greed. Well, ladies and gentlemen, I think the evidence will show you an attorney who doesn't know what [Tr. 93] he's talking about -- okay? And I'm not referring to my client -- and takes a fee for bad advice is greedy. Yeah. There's greed here.

Incompetence at best; greed at worst. Was he incompetent? Yes. I told you, ladies and gentlemen, that there was no monopoly on the part of Ellis Neder during that time when it came to incompetence. Not his own incompetence but the incompetence of the people he hired. Not his CPA, because that was good advice. That of his lawyer. But there was an

enormous amount of incompetence and indifference on the part of the lenders. These people who are screaming "foul" today, ladies and gentlemen -- and it had to run through your mind as you were watching those numbers go through -- okay? -- were completely incompetent.

Let's talk about where they were coming from. They also had a change in their lives, a mid-life crisis. We're talking about savings and loan institutions in 1982 did nothing more than finance homes. They were not even permitted to be in the commercial market. That was the commercial banks, for the pros. What did they do? They lobbied congressmen, which I'm sure we're all aware of today. And they said, "Look. We want to get out there. We want a bigger piece of the pie. We want to be federally insured just like commercial banks." And they [Tr. 94] got to some senators and congressmen. And they said, "Sure. We can do that."

Well, we realize today with the testimony that that decision is costing the American taxpayers over $500 million because of that decision. Now, these S&Ls, because that's what they are, with the exception of two private lenders, that's where they came from. What did they have? They had people who lent residential property. There was a scurry to find some -- steal commercial people from here and people from here. And they found a lot of incompetent people. Now, who were the big commercial lenders giving up at the time? Their best? Of course not. They've got new competition now. They're giving up their worst.

And I'll suggest to you the evidence will show that these loan officers were probably the worst that S&Ls could have picked up at that time.

These people are charged with knowing what they're doing and guiding, not only the people they represent, but potential buyers. No. Their greed, their ambition, and their

incompetence led to the saga that will unfold in this courtroom over the next couple of months.

Of course, when they come in this courtroom, you're going to hear testimony, "Foul. No way. We were deceived." Ladies and gentlemen, you will be the judges [Tr. 95] of that. There's something, and you'll hear about it, called indifference. They weren't deceived. They didn't care. That's what the evidence will show. They're out there booking loans. They couldn't lose. The American taxpayer, as we found out today, was going to foot their mistakes. What did they care? The more loans they put on, the bigger raises they got. Mortgage brokers were getting commissions. Real estate is hot. Everything is going great. Okay?

A lot of mistakes, ladies and gentlemen, were made because of their incompetence and their greed. That's not necessarily a crime.

That's the background, ladies and gentlemen, of this case. You can't sit here and look at charts. You've got to put all of the evidence that unfolds into that background as to what was going on out there in the market.

As I told you, a lot of things happened that were beyond anybody's control. And one of the most important things that happened in the real estate market, and experts will tell you this, that in 1986 the same brilliant Congress who decided to give the S&Ls the power to go out and commit commercial suicide, passed what they call the 1986, quote, Tax, quote, Reform Act. And you will hear experts, ladies and gentlemen, and I'm sure even [Tr. 96] the alleged victims, tell you it was the worst thing that ever happened to this country economically. And we're still paying for it today.

Because what did that act do? It broke the real estate market, took the bottom out completely. That act started in

1987, coincidentally when all of this started to fall apart. Why? The witnesses will tell you. Because that market -- those professionals that are listed on this did not get the tax benefit of buying a second home or condominium as an investment. It was taken away. These people were making decent livings. 50-, 75-, $100,000 a year. A way to avoid taxes legally was to invest in condominiums. And those markets were strong. That's the incentive that put Ellis Neder in the market.

But what happened? They changed the rules. Now what do you have? You've got a developer who owes a lot of money. When I say "owes a lot of money," ladies and gentlemen, you will find out that Ellis Neder personally guaranteed every single loan that he made at that bank. Voluntarily, to any of the lenders, personally guaranteed it.

As I told you, he started off. He made a small success. His net worth probably at one time was up to about $7 million. He said, "No. I'm going to go forward. I guarantee it all personally. If any one of my projects [Tr. 97] doesn't work, I lose everything." That's the kind of faith he had.

Somebody with criminal intent, ladies and gentlemen, doesn't do that. They hide behind corporations. He said, "Forget about the corporations. I guarantee it personally. If it all falls, it all falls. This is what I want to do."

So that Tax Reform Act, ladies and gentlemen -which, again, the economists who come in here will tell you -- is costing us a fortune today. They'll probably tell you that George Bush won't be the next President because of the repercussions of that that we're all suffering today. It destroyed a lot of people. It certainly destroyed Ellis Neder, and it certainly hurt the banks.

But the evidence will show they were on -- and experts will testify to. They were on a suicidal path anyway.

Now, there's some talk about how Ellis Neder had put down down payments for certain people. Ladies and gentlemen, that's absolutely true. He did. But he himself did not do that. He formed what they call an equity corporation, something he had read about -- and you'll hear some testimony about what it is. It's where somebody puts up their credit, their intent. You put up [Tr. 98] the money -- okay? -- and you invest in something. In this case it was a condominium. And at any time before the condominium sold -- if it sold for a profit, you share in that profit.

You heard something about reservation agreements. And by the way, ladies and gentlemen, there's nothing in any of those agreements with the banks that said that he can't do that. This again was a new concept. This was a concept which in fact was a reaction to what was happening in the market, and all these great thinkers, real estate people, were saying, "Hey, try this."

So what did Ellis do before he did that? He went to his lawyer again. He said, "Tom, I heard I can do this. Can I do it?"

"Let me check," Mr. Turner said. He came back a few days later. I checked with the Home..." -- whatever the federal agency is. "Yeah, you can do that."

He said, "Fine. Let's do it."

So what did he do? By this time he had an organization. Real estate people, a mortgage broker, sales people on the force. He said, "Go out and sell this." There was a contract that was drafted. "Sell this."

Now, ladies and gentlemen, I suggest to you that he later found out that some of these people that he asked to [Tr. 99] do that perhaps weren't altogether honest with him. Now, the people he worked for that he personally talked to, like some

of the attorneys that worked in his office -- he said, "Yeah, you can do it."

They all said, "Are you sure?"

"Look. I checked with Tom Turner. He's a real estate lawyer. You call him. Tom says it's okay."

And you'll hear from every single employee who worked for Mr. Neder that will come in this court that he never did anything without consulting Tommy Turner, quote, his real estate lawyer expert at the time. He said, "You can do it." Fine. And he did it. Nothing clandestine.

The only thing he put in that contract was a nondisclosure because he said, "You know, this is a great concept, a great idea. It's legal. I don't want every potential developer in Jacksonville to start doing this. I'll create my own competition using my methods." Once again, with that good faith he did that.

Well, ladies and gentlemen, I told you that predominantly we're talking about the S&Ls in this case. There are also two other lenders. One is called the Greyhound Corporation; the other one is called the United Brotherhood of Carpenters and Joiners, a New York union. The union, ladies and gentlemen, the government is telling you was a victim in this case. I'm not going to go into [Tr. 100] too much details of what the evidence will tell you about that union, but you're going to have to look very, very closely about their practices.

You'll find out that this union had a fellow named Adler and another guy down here named Fitzsimmons who were actively mortgage brokers for the union and advisors, financial advisors who go out and find people who needed money, and they would lend it to them, for both land acquisition and later on for construction.

And one of the terms that they would want is, "Hey, if I give you the money for land acquisition and construction, you use union labor." Any builder who had the right kind of a project that would sell for the right kind of price could probably do that.

Well, such a project was Reddie Point. Reddie Point, ladies and gentlemen, sits at the end of University Boulevard, at the end, the very end of University Boulevard next to a very successful and a beautiful development called Charter Point. But it's even more valuable than Charter Point because it's right on the river, all of it. Mr. Neder had an idea. Once again, the sketch. This property could really be developed. He had the idea of putting townhouses, individual homes, condominiums, with a yacht club right there on the river, with great access to the Intracoastal, close to town and [Tr. 101] yet you're away from it all. And he hired appraisers, as he did all the time.

Now, I'm not going to talk too much about the appraisal end, ladies and gentlemen, because the appraisers are represented by two very competent counsel, and I think they'll handle that. And they'll tell you what appraisers are and what they are not. I'm just going to tell you what they are not.

They're not a science and they're not a fact. It's an opinion. And I think the analogy that you'll hear from the witness stand is, "Look. I've got this little general store on the corner of I-10 and somewhere else. Okay? And it ain't doing very well."

However, somebody with a better idea and with a better use of that land and had the better idea of what to do with that land and use it to its highest potential, that very same piece of property could be worth five times, not two times, but five times its worth if it's used properly. In that case, who knows? It might be McDonald's; it might be motels; it might be something else. But it's certainly worth more than it is to have

a general store on it. Some people just buy general stores and just rip them out and put what they want to put on there and pay more than the property is worth, than the property would be worth as a general store.

[Tr. 102] And appraisers have to go out and use that kind of assessment. Like I said, I'm not going to deal with that. You people have been here a long time, and I don't want to keep you any longer than I have to. I believe co-counsel will deal with that issue.

Anyway, people came down from the union and they said, "Yeah. This is beautiful. It really is. We like your ideas. We like your plans. What do you need?"

"Well, first of all, I need $6 million to buy the land. I believe the land -- I mean, the land is worth a lot more."

In fact, it was. It was on the market way before Mr. Neder for over $9 million.

"Fine. We agree. I'll tell you what," they said. "We'll let you do a couple of things. We'll let you buy the land. We'll give you some more money down the road to do some construction on it. What do you need altogether?"

He said, "I'll probably need about $21 million, $22 million, for the project."

Well, they advanced him 6-, and altogether it's about $14 million. Now, there was some talk about the construction draw-downs, that false invoices, quote, false invoices were sent. And a part of that loan agreement was, "As you need the money for construction, tell us what it costs, give us an invoice or a proposal, and we'll make [Tr. 103] a decision."

This fellow Paul Adler would make the decision. "And we will recommend to the union to go ahead and advance you the money."

Well, Ellis Neder said, "Well, do we have to do it that way? Normally that's not the way I do business, you know. I..." --

"No. We'll do it that way."

Well, as time went on, the other $7 million to complete the project wasn't forthcoming. Meanwhile, he's paying an enormous amount of interest on that money, as well as other projects. Make no mistake about it, ladies and gentlemen, the money wasn't to change from the different loans that he got. Okay? But the important thing is the money all went back into the real estate, into the project. He did not spend $40 million on a lavish lifestyle. There'll be no evidence of that. It all went back into the project, and he was running short of money.

So he says, "Mr. Adler, I'm running short of money. The only way I can get any money to keep this thing alive, keep it afloat," he says, "is through the take-downs."

Well, Mr. Adler turns around -- and Mr. Adler is a pretty gruff New Yorker. And he says to him something to the effect that, "I don't care what you do. Keep it [Tr. 104] afloat until I can get you some more money." Those weren't the exact words, ladies and gentlemen. When we get to know each other better, we'll hear the exact words that he said.

Now, who's Adler? Adler was the financial representative of the union. He had the power-of-attorney to do whatever needed to be done between Mr. Neder and the union. And what did he say, in effect? He said, "Go ahead."

And that's what he did, ladies and gentlemen. We're not going to sit here and tell you that what the government is saying is not true. No. We're going to tell you that he had permission to do it.

But what did Ellis Neder do? He kept a record of every single thing that he had done, so when the money came he could pay it all back in a hurry. Well, the money never came.

And probably the worst part of serendipity that could ever happen to a man was that while he was in the middle of this project with all of the other problems, you'll hear evidence that an archeological find was done on the property which ceased and desist all work, an Indian burial. What did that mean? That meant that the government had to send representatives down, search the property for artifacts, and make sure that you can develop [Tr. 105] certain parts of it and certain parts you can't. All work had to stop. Well, ladies and gentlemen, that was the straw that broke the camel's back.

Had -- and I don't think there's going to be any discrepancy about that. Had Reddie Point been able to go forward through fruition, everybody would have been paid except Mr. Neder. It was that kind of a project. It was just gorgeous. Even in the worst market that we had at that time -- and you'll hear from the people who were selling it -- the sales were phenomenal. The interest was unbelievable, because it probably was the best project. And it could have saved everyone.

But that wasn't to be. The union backed out. No other money was forthcoming. And Neder Properties was on skates. It was the end. The end was coming.

So what did Mr. Neder do? He turned around and gave back all the property that he had acquired to the lenders, voluntarily surrendered it. It didn't work. He lost an awful lot the money; they lost some. But you'll hear from the evidence not as much as they say they did, because they were taking tremendous interest. $800,000 here, $300,000 here. Okay? And it failed. The business failed. The banks weren't robbed,

but the business failed. We suggest to you the evidence will tell you there was no crime.

[Tr. 106] The government tells you that this is a big bank fraud case, that sort of thing. I'm sure people will be looking for evidence of Swiss bank accounts, bank accounts in the islands. Ladies and gentlemen, there will be absolutely no evidence of that. Mr. Neder is broke. I have the privilege of being appointed to represent Mr. Neder.

MR. KUNZ: I object, Your Honor, and would like to come to sidebar.

THE COURT: Come on up.

(At the sidebar:)

MR. KUNZ: Judge, counsel has told that the jury that he's court-appointed. That's totally irrelevant and improper, Judge. He's trying to vouch for the fact that his client alleges he's broke. That's totally irrelevant. It's improper.

MR. FALLIS: Your Honor, I believe it's quite relevant. We'll be having evidence that Mr. Neder is in fact indigent for all practical purposes. Financial statements would be --

THE COURT: Well, that's for a matter of proof, not for a matter of appointment. I'll sustain the objection, and I'll instruct the jury to disregard it.

MR. FALLIS: Your Honor, I do want to inquire further into his financial status and tell them that he [Tr. 107] has --

THE COURT: You can go into the financial status. But the fact that you were appointed to represent him

can't vouch for the fact. That's totally separate and apart. It's not evidence here.

MR. KUNZ: He was appointed, Judge, in 1991. The indictment is '84 to '88.

(In open court:)

THE COURT: Ladies and gentlemen, I've sustained the objection to the comment that Mr. Fallis has made to you. You will disregard his comment about why or how he's representing Mr. Neder in this case. The evidence with respect to the question of what happened with the money or who got what or didn't get what will come from the witnesses.

As I told you in the opening, what these attorneys are saying now is not to be considered by you as evidence at all. This is what the attorneys believe the evidence will show. And it may or may not. That's what we're here to find out.

MR. FALLIS: Ladies and gentlemen, Mr. Neder is broke. And the evidence will show you that there were absolutely no payoffs to the banks, to any of the people he worked for. No one made any more than a fair salary. He himself drew nothing more than a fair salary.

[Tr. 108] The government won't even allege that there were any because there aren't any. Let's face it. If there were, you'd know about it. And you've got IRS, FBI, everybody else working on this case. There are none.

And why aren't there any? Because all of the money was put back into all of the projects on the hope of bailing out.

Now, why is that important? It's important, ladies and gentlemen, because, as I told you, this is a criminal case. The government -- and really the only issue in spite of every single thing you've heard and all of the small little issues that you heard, there's only one issue in this case. This case is really

more simple than it appears to be. And that issue is did Mr. Neder or anybody else have the criminal intent to defraud. That's really simple. Not did anybody lose money, were there mistakes made, was there incompetence, was there even greed? The only issue that you will have to decide after hearing all this evidence is was there the criminal specific intent to defraud.

Now, remember, ladies and gentlemen, as the Court told you before, it's going to be quite some time before any of us will be able to get up here and put on our case. We ask you to please keep an open mind. Resist the temptation from sitting here for maybe a month or two [Tr. 109] months -- I don't know how long Mr. Kunz has in mind -- of taking in all of this government evidence and making your mind up then. You can't do that. You've sworn that you wouldn't do that. Please keep an open mind until you've heard all of the evidence.

But we will ask you to do something. While the government is putting on their witnesses, they'll be directing their witnesses. We ask you to please listen to cross examination as intently and as hard as you did to the direct examination. That's very important.

Now, ladies and gentlemen, like I said, it will be some time before any of us get up here and put on a case and tell you about what our clients' case looks like. Once again, please don't make up your minds. We are going to put on a case. Don't shut out the possibility of making the decision after everything is in. Don't be led into that. You're jurors and you've taken the oath not to do that.

Thank you.

THE COURT: Do you want to go now or wait until after lunch?

MR. MAKOFKA: We'd like to wait until after lunch.

THE COURT: Okay. Ladies and gentlemen, it's 12:00, so we'll take the lunch recess at this time. [Tr. 110] Remember the instructions that I've given to you earlier. Do not discuss the case with anyone, even amongst yourselves. Do not form any opinions or conclusions at this juncture. Do not read or listen to anything if it happens to be covered in the news media.

Be back at 1:00.

(The jury is excused.)

THE COURT: You may be seated. When we come back after lunch, if you want to take a minute or two and explain to the jury what direct examination and cross examination is, I'll allow you to do that, if one of the attorneys wants to. They don't have the foggiest idea what you're probably talking about.

MR. KUNZ: What time do we return?

THE COURT: 1:00.

(Recess, 12:00 noon.)

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[JURY CHARGE CONFERENCE]

[Transcript Volume 33]

[Tr. 27] * * * MR. FALLIS: Judge, I don't think we're talking about form. But I think we should consider the fact that those pattern instructions are just suggestions to the Court. I mean the Court can change the wording at any time it wants. I don't think we ought to be locked to the pattern instructions here. And I think what you've got there, you

know, sounds very reasonable and flows well. I don't think that, you know, that we're locked to the pattern instructions. I don't think the pattern [Tr. 28] instructions in every case have to be out of the same mold.

MR. KUNZ: It's fine, Judge, I won't object.

THE COURT: Okay.

MR. KUNZ: Judge, could the defendant be plural here? It should be plural, shouldn't it, the defendants, because on some of them we have plural and some we have single, and there's really no rhyme or reason. I think we should be consistent.

MR. MAKOFKA: We could say a defendant instead of "the."

THE COURT: I would prefer changing it to "a", "a defendant."

MR. KUNZ: Because you give an example, on page 17 you say the defendants, so I mean we should be consistent.

THE COURT: Make it "a defendant can be found guilty."

MR. KUNZ: All right, sir.

THE COURT: We'll do that on all of them.

MR. KUNZ: All right.

THE COURT: Any other problems on 10? 11? 12?

MR. KUNZ: On 12 we need "a defendant."

THE COURT: "A defendant" again. Okay?

MR. KUNZ; You don't want to hear about the [Tr. 29] supplemental instructions here?

THE COURT: Pinkerton?

MR. KUNZ: That's where I think it should go.

THE COURT: Let's wait and hold on on that.

MR. KUNZ: Okay.

THE COURT: 13?

MR. FALLIS: Your Honor, where did the definition of false and fraudulent statement come from?

THE COURT: On the bottom of the page?

MR. FALLIS: Yes, sir.

THE COURT: That came out of an instruction that I used in the case in Tampa as to the definition.

MR. FALLIS: Okay.

THE COURT: Let me look on here. I think it's also in the -- I can't remember what Circuit. I think it was the Eighth. I had to go to the Eighth Circuit to get that.

MR. FALLIS: I don't have an objection to that, but I do have an objection to the material fact, and --

THE COURT: "A material fact is a fact that would . . ." --

MR. FALLIS: Correct, hum, but, but the problem is when we merged that into the material and false saying that that's not a question for the jury to decide, what's material.

[Tr. 30] MR. KUNZ: It's not.

THE COURT: It's a Court question.

MR. FALLIS: Well, before I get to the point, I want to know what's the source of that ruling because the statute, you know --

THE COURT: The case law.

MR. FALLIS: Well, I appreciate that, and that's what I'm asking. What is the authority on the case law?

THE COURT: There's tons of cases in the old Fifth Circuit and the Eleventh Circuit that the issue of materiality is one for the Court to decide, and you'll notice I had to, when we get to the tax count --

MR. FALLIS: Yeah.

THE COURT: -- even though it's not one of the essential elements, the statute and the indictment as drafted, it includes the words "a material false statement," but the instructions omit it the way that it should in order to avoid the jury from saying, hey, the indictment says material, but the elements don't, so you put that in there so they know to disregard it, and I'll make a factual finding on the record about the materiality as to each of the counts. That's a Court question.

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[BENCH RULING ON MATERIALITY]

[Transcript Volume 34]

[Tr. 219] * * * THE COURT: Okay. Do you want to -- anybody want to argue anything additional on Rule 29 motions?

MR. FALLIS: No, Your Honor. I stand on my previous arguments.

THE COURT: Okay. Previous rulings will apply.

With respect to the issue of materiality on all the charges that have the false statemens, I conclude as a matter of law that the evidence establishes beyond a reasonable doubt that the statements were material to the institutions to which they were submitted to. So in accordance with the preliminary charge conference that we had last week, the issue of materiality will be for the Court to decide.

Now, is there anything else you want to take up before we get into the instructions? Because I don't have my copy. I've got to go get it.

MR. KUNZ: The only thing we would mention with respect to the materiality to the institution, also as to the filing of the subscriber of false income tax returns.

THE COURT: Yes. Well, the false statement thing. That's the IRS. The same ruling. The same will apply.

* * * * *

[DEFENDANT'S CLOSING STATEMENT TO THE JURY]

[Transcript Volume 35]

[Tr. 168] MR. FALLIS: Please the Court. Counsel.

Ladies and gentlemen of the jury, I'd like to join with the Government in thanking you for your sacrifices. I know it's been long, it's been a couple of months -- actually over a couple of months, and I'd like to thank you on behalf of Ellis Neder, who has asked for his day in court, who's asked to be heard by you, who's asked for the privilege and his right to testify and to present his defense.

The Court has told you all along that Mr. Neder did not have to put on a case, nor did any other defendant have to put on a case. We could've sat here on our hands and the [Tr. 169] Government would've still had the awesome burden of proving his guilt beyond and to the exclusion of all reasonable doubt.

Obviously, that didn't happen. Mr. Neder didn't want that to happen. He wanted you to hear everything. He took the stand and he told you in his own words exactly what happened back in the eighties. He didn't have to subject himself to the cross examination of the experienced prosecutor, but he wanted to. He wanted you to hear both sides of this story. And it is a story, ladies and gentlemen.

Now, before we go on to discuss the evidence in this case, I'm going to tell you right from the start I've got some good news and I've got some bad news.

The good news is this is probably the last time that you're going to have to listen to my voice or probably look at me. Okay?

The bad news is that law school is not over for you people. You all sat here and took Business Associations I, and you learned about corporations, you learned about nominee corporations, and you certainly learned about principal and agency relations. Now, you're all ready to go out and get an A in the course, I'm sure.

Now it's time to learn a little bit about criminal law, because, ladies and gentlemen, this is a criminal case. [Tr. 170] We're in a criminal court.

What the Government has done, I suggest to you, is disguise a civil case to look like a criminal case, and it's very important that you understand that.

Criminal law is a lot easier than business associations. Criminal law is very simple. For anything to be a crime there are things that are necessary; one is the mental intent and the other is the action.

Lawyers have fancy words for that. One's called the mens rea, the required mental intent, specific intent to commit the crime. The other portion is after the rea, which is the action. Not all actions are criminal unless there is specific intent to commit that crime. All these things that are uncontroverted here, those actions are not criminal unless you determine that Mr. Neder, or any other defendant, acted with criminal intent.

The Court will read you the instructions on the law, you'll take them back with you, and it will say, he must have willfully and knowingly committed this or done this with the intent to commit a crime.

Now, there are defenses to that. One of the major defenses to that, ladies and gentlemen, is a good faith defense. If, after you have gone through all this evidence and you go back and you weigh that, and you say to yourself, Mr. Neder did all the things that the Government is accusing [Tr. 171] him of doing but he had a good faith belief that what he was doing was proper and not a crime, then he is not guilty of anything in that indictment; because they've got to prove the mental state. And I suggest to you they have not met that burden because what the Government has chosen to do is concentrate on all the acts without bringing any real evidence as to what Mr. Neder's mental condition, mental state was at the time.

I don't mean his mental state, whether he was sane or insane, that's something entirely different; whether or not he had the specific intent to defraud. Defraud means to deprive someone of something, and let's face it, common sense, get

unjust enrichment for this. It's stealing. To be a thief. It's simple, criminal law is that simple.

I suggest to you that the evidence shows you quite the opposite. Mr. Kunz in his opening and in his closing said you're going to see this big pyramid scheme. You didn't see a pyramid scheme. What you saw, ladies and gentlemen, was a developer who borrowed money -- sure, he borrowed money, and he borrowed money for property in excess of what he paid for it. That's not a crime, that's absolutely not a crime unless he in doing that had no intention of repaying that money. That's stealing, that makes it a crime.

The evidence tells you quite differently. What did this developer do? This developer borrowed money and he [Tr. 172] borrowed in excess, and we'll get into why that's not a crime, and he put all the money back into his business. Sure, lousy bookkeeping, and you know something, maybe a lousy business man, but not a criminal.

Mr. Willertz got up here and if you recall, I said, well, did he steal the money? Did he send it off shore? Did he do this? No, no, we're not accusing him of stealing the money, we're accusing him of diverting the money. Do you recall that testimony? That's very important testimony.

And because he diverted the money, money which he borrowed, by the way, and he signed personally for, that's not the kind of person who had no intent of paying back. When Mr. Neder started out he was a moderately successful lawyer, actually a very successful lawyer with a net worth in excess of a million dollars. What did he do? He said, well, I changed my career, I put it all on the line, go for broke, and he guaranteed everything he took.

What did he do next when he decided to go into business, into this new business? He went and he hired what

he thought was the best attorney that he could possibly find, and in all those projects hired the best architects. This is not somebody who's looking to borrow some money, take it and run. That's the crime. That didn't happen here.

You sat through this whole trial and you saw what these [Tr. 173] projects looked like. You saw the money, the staff that was created. That's not what a thief does, a criminal does. They go in with limited, limited resources, take what they can and they're out of there.

Mr. Neder had borrowed a lot of money. I haven't added it up yet, but probably in excess of twenty-five million dollars, maybe thirty million dollars. But where did it go? It all went into business. A thief doesn't do that. He'd stop after the first four million, five million, six million, when he's had enough, and he's out of there.

What does he do, take off, maybe if things are bad declare a bankruptcy and keep what's left? Mr. Neder did none of those things. He got into financial difficulties, and in the United States of America it's not a crime to be unsuccessful in business. You don't go to jail for that. You don't get indicted for that.

And what did he decide to do when he ran into difficulties, like I said, cut and run? No. He said, no, I'm going to build my way out of this, and he tried and he tried. You've heard the testimony, even the Government's witnesses, what did they say, yeah, he's a workaholic, he was -- he tried real hard. We brought in, not the Government -- okay -- we brought in an accountant who went in and she did a chart, and she showed the millions of dollars, where they went. Sure, it was money taken from [Tr. 174] Reddie Point and went somewhere else. It didn't go into his pockets.

Life style -- over a four year period of time the man brought himself a couple of cars, took a couple of vacations, a man who, by the way, had that kind of life style, and his law practice supported that kind of life style. That's not a crime, that's just smoke that the Government has thrown at you to try to create some kind of ill feelings about what happened, saying here's a man who's supposedly in financial difficulty and he's still living well. Ladies and gentlemen, over a four year period of time that's not living so great.

And, what else did they say? Our accountant, don't forget, came in here and she said, I can account for all of this; and then there's somewhere over a million dollars that was some made out to cash, some made out to Neder, that went into different accounts. Okay. Not into his pocket, not into some off shore account. And by the way, do you recall Mr. Kunz saying, asking Mr. Neder on the stand, "Did you tell somebody in October of that year that you had money off shore to hire a lawyer with?" and he said, "No."

I guess you were expecting somebody to come in here from the Government and say, yeah, Mr. Neder told me that. No one did, because it never happened, because there is no other money.

[Tr. 175] Mr. Neder was here two weeks ago and told you he had thirty-eight dollars in his pocket. That's unrebutted. Okay. A thief who has dealt with millions of dollars does not wind up flat broke. Common sense won't allow you to reach that conclusion. They want you to reach that conclusion.

What else did the Government try to do to try to turn you against Mr. Neder? The statements supposedly by, whatever her name is now, Driggers, whatever her name is, that woman with the six names -- okay -- who worked for Mr. Neder for five years, saying, "Wow, yeah, he said he had a

license to steal." Ladies and gentlemen, he told you the context of that.

Can you imagine if we all had tape recorders in our offices and in our homes, and things were taken out of context? You know what must've happened, the Government grilled this lady -- this lady, by the way, who signed her stepsister's name and was petrified, was granted immunity to testify and the Judge will tell you, anybody who's offered a deal by the Government his testimony must be given great caution. That's a nice way of saying, watch out to what they say. You'll get that in a jury instruction. And she's one of those people, so you have to imagine what was going on.

The prosecutor said, well, what did Neder ever say or [Tr. 176] do? Remember five or six years, did he ever say anything about stealing? Oh, yeah, he once said -- and that's the context of it.

Mr. Neder was not a lawyer who had a license to steal or ever tried to steal. Matter of fact, even Mr. Moore and everybody else testified that he had an excellent reputation as a lawyer. Mr. Moore said he kept working because he was so, he was very honest, and he earned that reputation in twenty years in the practice of law.

Don't be taken by that. That's the kind of garnishment, the kind of smoke that they want to throw at you to turn you against the defendant in this case, Mr. Neder. That's not what this case is about.

As I told you, this case is nothing more than a civil case that's being disguised as a criminal case. This is a case where banks lost money, Mr. Neder lost money, and a lot of people lost money. In cases like that they're usually suing for money. Okay? Dollars. In cases like that, those civil cases, the proof, the proof that Mr. Neder is liable to those people is real simple,

it's by a preponderance of the evidence, maybe fifty-one percent. If you find he's fifty-one percent at fault, he's liable for that. Okay?

In a criminal case, not so. The proof, the burden of proof that Mr. Kunz and all these agents and everybody else the whole United States government has to prove against Mr. [Tr. 177] Neder and every other codefendant is beyond and to the exclusion of all reasonable doubt on a scale, ladies and gentlemen, that looks something like this. They've got to put enough evidence on every single count to prove beyond and to the exclusion of all reasonable doubt that he committed a crime. Not that he was a bad business man, not that maybe he might owe some bank some money, or that it's a civil fraud case or something like that. No, a criminal case. And our forefathers have made it that way.

They said -- Mr. Kunz got up here and said, I thank you on behalf of the United States of America. Well, ladies and gentlemen, Mr. Kunz is not the United States of America, he works for the Government; and neither are any of the IRS agents, FBI agents, or anybody else, they're government employees.

Do you know who speaks for the United States of America in this courtroom? You do. You are the United States of America because the United States of America has a constitution and in short it says, the Government, in this case Mr. Kunz, the FBI, IRS, you cannot do to any fellow citizen what you want to do unless we're here. Now, our founding fathers knew what they were doing. They were brilliant in that, because they never trusted the people in power because they can change. But when you put that in your constitution there is one check on the powers that be [Tr. 178] on the elite, and that's twelve people from the street. Twelve citizens, the most powerful people in this courtroom.

More powerful, certainly, than anybody at the defense table, more powerful than anybody here. And you know something, more powerful than the Court itself. You answer to no one, your decision is final. If you don't like what's happened in this courtroom, say it, and they have no choice because you are the ultimate deciders of fact, of what's going to happen in this case. No one can ever second guess you. That's an awesome power and that's why you took that oath.

Do you recall every time you walked in and walked out of this courtroom we all stood up? That's respect for what you symbolize, that's what it's for. We don't know you people individually, you're probably all wonderful people, I'm sure, but we stood up for respect, to symbolize those twelve people who are the ultimate, ultimate power in this courtroom. You've taken vows to use that power properly, fairly, to keep a check on the Government, to make sure that they don't do anything that you disapprove of; and not just for Mr. Neder, for everybody. That's what you took that oath for.

You didn't come into this courtroom to work for the Government. You came in this courtroom to work for America and every single citizen in this country. We're asking you [Tr. 179] to do just that. Now that we know what we're all here for and what our roles are, I'm sure you're going to do your job.

Now, I said to you that this is a criminal case disguised -- is a civil case disguised as a criminal case. You've had law school, you've also had some history here.

We brought in some witnesses. We brought in a professor from Wisconsin, yes, Dr. Fish; and his purpose was to come in here and tell you what was going on back in the eighties, in a world that probably none of us, with the exception of Mr. Neder, Mr. Turner and a few other people who were involved, and those bankers who came through here, were involved in that world. So open up that window and let us look

in and see what was going on. And he told you what was going on.

Now, Mr. Kurz made a big deal about are you getting paid for your testimony? He said, "Yeah, I am," he said, "I'm getting sixteen thousand." Mr. Wilhoit said he was getting seven thousand, I think; the accountant was getting four thousand. Ladies and gentlemen, this is America, this is not communist China. People do get paid for their services.

What was the Government trying to impute, that they're going to lie because they're getting paid? This is a professor, ladies and gentlemen, who took an oath, with a [Tr. 180] reputation. And I asked all those witnesses, did your reputation mean anything; of course, it does. They're not going to go on the stand and lie for Mr. Neder or anybody else. They came on the stand to tell you just like it is. But the Government wants you to think that maybe they're lying because they're getting paid. Okay?

On the other hand -- and if they're getting paid, what are they getting paid? Dollars.

On the other hand look at the Government's witnesses, like Mr. Turner, Michael Loyd, Ms. Manss, they're getting paid too, but something a lot more expensive, something more dear than dollars -- freedom. Think of the awesome power of this Government.

I suggest to you, ladies and gentlemen, that if anybody's going to perjure themselves or lie to get a better chance they're going to do it for their freedom than for a few bucks.

And once again, remember the Court's cautionary instruction, anybody who takes that stand who's made some kind of a deal with the Government, caution, watch out. And that law, that instruction is in there for that purpose.

Well, enough about people committing perjury or people stretching the truth, because if anything the Government witnesses have more of a tendency to do that than any witnesses we call.

[Tr. 181] What did Mr. -- Dr. Fish tell you about the eighties? He told you what the economics was like, what bankrupt was like. What happened? The Government, once again, set the S&L's loose in the eighties. They were confined to home mortgages and small loans, maybe ten percent they can go commercial. All of a sudden their friends in Congress, who knows, the President, the most powerful people that be in Washington said, okay, guys, you've got a license, you've got to go commercial, and boy, they did.

And they went out and they hustled loans all over. What loans did they hustle? Commercial real estate. That's what was going on, Dr. Fish told you that. They weren't bankers any more, they were loan production officers. Think about that. A loan production officer to keep his job has to do what? Produce loans.

He told you the competition was fierce because not only were the S&L's competing with the commercials now, but also private lenders like the two in this case, Greyhound and the union. Everybody was getting in the act. And what's happening when everybody's getting in the act? They get just like a neighborhood candy store, a neighborhood convenience store. The more of them, the more reckless they get.

And what were they doing to the real estate market? They were driving it up, as Dr. Fish said, almost without [Tr. 182] reason, and it affected the economy. Real estate, I mean people would buy a piece of real estate like one day and a month later they would make tremendous profits because of the supply and demand, the availability of money. Jacksonville was

no different than anywhere in the United States, it was happening all over. And that's what happened.

They went out there -- Ms. Doerr told you. I said, "Ma'am," I said, "...were you an aggressive lender?" "Oh, yeah, we lend money." Do you recall how she said that? Everybody knew that Caribank was lending money. Think about it. Think. They were out there aggressively lending, which means that they also dropped their standards, because they were competing with the guy next door who might have higher standards. And how do you compete in the same market? You drop your standards, you look the other way sometimes. You pretend on fiction, you do what you can to note your files, go back to your committee and say, okay, this loan is good, we got all the bases covered. Okay?

But what did Ms. Doerr say? This is really important. She said we had lent Mr. Neder some money, we had a good experience, and all of a sudden her bosses said, hey, there might be some land flipping going on out here in the United States, let's be careful of it, make sure that everything you lend to there's arms length transactions. Now they're [Tr. 183] on the alert for this, right? And so she did.

She called Mr. Turner, she said, "You know, we're going to have to get..." -- "...my office is going to have to get something to say that this is..." -- quote -- "...an arms length transaction."

Well, Mr. Turner knew darn well they weren't arms length transactions, and even Ms. Doerr knew they weren't. How did she know? Because Mr. Neder told her. Don't you recall, he told her in so many words, her and her boss, Dan Conlan, or whatever his name was, out on the golf course. He said, "How do you do this?" "I have other people buy the property for me, I buy it back." No problem.

Did they stop loaning him money? No, they lent him another two million dollars after that, and that's unrebutted testimony. Did Marga Doerr come back here and say that didn't happen? No. And it was only through cross examination that I got out that she had this conversation on the golf course with her boss and Mr. Neder.

So what happened? Give you an example, and Marga Doerr is a perfect example. Banks were lowering their standards, doing what they had to do to get around the regulations. Dr. Fish told you what they would do sometimes if they wanted to charge a higher rate, they would have somebody form a nominee corporation because they could get a higher interest rate from a corporation than they can from an [Tr. 184] individual person. And they did it. In this case she wanted to document the files to please whatever the bank examiners, because I think Dr. Fish testified they were around, you know, that this was an arms length transaction; and when it all fell through, now they're screaming fraud.

Ladies and gentlemen, you cannot defraud someone when they know the truth. In this case they were told the truth. By definition fraud is something you do to somebody who is unsuspecting, who doesn't know, you conceal it from them. Mr. Neder never concealed it.

These two affidavits that the Government placed so much emphasis on are not concealment. I suggest to you they are more than that. Ladies and gentlemen, this is something that was drafted by Mr. Turner. Now Mr. Turner says, "I only saw one of those, I didn't see both of them." He admitted to one because we had a piece of paper, you recall, that had his own penmanship on it. He said, "Well, all I did was correct the punctuation." You don't pay your lawyer $125 an hour to correct the punctuation on an affidavit, you pay him that kind of money to draft the affidavit. And he drafted both these

affidavits. And what did they say? They satisfied the loan officer.

The most important thing, ladies and gentlemen, is that it goes to his intent. He tells them right here and now in Paragraph 5, that, [Tr. 185]

"The corporation is an agent of affiant to the extent that the corporation has assisted affiant in acquiring the real property."

The same thing he did in the other affidavit to Ms. Doerr, to Caribank. He said the same thing. And, ladies and gentlemen, it's unrebutted and uncontroverted, that every other thing is a true statement if on that date Mr. Neder was in fact not an officer or director of the corporation, they were legally and technically true.

But that's not the point. The point is they were so concerned about whether or not Mr. Neder, what his relationship was with the company he was buying the property from, and now they're on warning now, don't forget, all their antennas are up. Their lawyer looks at this -- do you remember Meryl Gold when I asked her about that? I said, "Meryl..." I said, "...you went to law school, you had that boring course called principal and agent." And everyone that got on the stand, what does every agent have? Instinctive response, a principal. Who's the principal? That's the boss of the agent.

I think the Judge popped in, and I said, "That's a legal relationship, right?" and he said, "Sure." And I said, "Like husband and wife?" And I think the Judge said, "Well, who's the boss there?" But that's the kind of relationship it is. It's a legal relationship, and if they [Tr. 186] were concerned they'd better ask a little more about that relationship.

And not only that, Mr. Neder attended the closings, he brought Mary Millis, you heard, to the closings. He brought

Horace Marsh to the closings, all the people that were his nominees. You're not concealing anything when you're doing that.

Banks were welcome to come to the closings, their attorneys were welcome, but nobody cared. They didn't care. They wanted to produce loans.

They weren't being defrauded, ladies and gentlemen, they were being apprised. Okay?

Now, getting back again to the eighties, what was going on. All this real estate was going up, developers were going crazy all over. All of a sudden, like Dr. Fish said, somebody had to put the brakes on. So what did they do? They passed the 1986 Tax Reform Act, which everybody, including the government's witness, not just Dr. Fish and --okay -- Boackle, the attorney from Mississippi, all said that. Brooks, everybody said that. The bankers said it. That destroyed the real estate market. And who did that? The Government, again; and now we're all looking at this sickening five hundred billion dollar mess that was created by the Government.

Now what does Washington do? Gee, we're going to admit [Tr. 187] that we screwed up? Of course not. Are we going to go after, now, the power elite, the bankers and all them? No. We've got to account for this. How did they account for it? Let's find some criminals out there to justify what's happened.

They're not going to go after Ms. Doerr, they're not going to go after all the other bankers. No. Let's pick the weakest and the most defenseless, those business men who now have gone broke. That's what's happened.

Let's -- we can't go after them civilly because they don't have anything anymore, let's go after their freedom. And that's what's happened.

Because all this evidence, ladies and gentlemen, is nothing but civil evidence that belongs in a civil case. And that's what's happened here, ladies and gentlemen.

Now let's talk about what Mr. Neder was doing during this period of time. He got into, in '83, '84, he decided to get into the real estate business. Nothing big, small stuff. What happened in 1986 and 1987? What was he doing in that period when the Government passed that Tax Reform Act? He was in the middle of all his projects. Don't forget, we're talking about 1984 to 1988. In 1986 he had everything going. He was stretched thin, to be sure, and all of a sudden the market caved in on him.

And what did he do? Like I said, did he go bankrupt? [Tr. 188] Did he take whatever money he had borrowed and split? No. He continued to fight as best he could, and he came up with some innovative kinds of things.

He went to his lawyer, he went to his accountant. When he got there he said, look, what am I to do here? He said, I've got to stimulate sales, and Tom Turner said, and he admitted, he said, "What about this equity sharing arrangement?" He said, "Yeah, you can do that, Ellis, that's legal." He even drafted it for him, the agreement, the reservation agreements.

All that to try, not to take the money and run, but to build his way out and take care of his obligations. Don't forget, he had a line of credit even then that he could've borrowed even more and continue to borrow, and that's the way out. And he tried. What he did are not the actions of a thief or a criminal.

I told you, common sense tells you a criminal takes what he's got and he splits, or takes the next loan, does nothing and splits. But he didn't. He went on and on, he went to four

or five more projects hoping that at least one of them would pull him out of the mess that he was in. That's not a crime.

Yes, he diverted money. He was a lousy -- he kept lousy accounts, but he didn't steal any money. You can rest assured, ladies and gentlemen, if Mr. Neder had any money [Tr. 189] stashed anywhere in the world, not just in the United States, between the IRS, the U. S. Attorney's office, and the FBI, Labor Department, the most powerful investigative agencies in the most powerful country in the world, they'd find it. It just ain't there because he never did.

He did what he could do. He tried to survive. That's not a crime.

Supposedly, all these things that he did, statements, false statements to the banks, that kind of thing, technically were not prohibited by any of the agreements that he signed with the banks. There is no -- and I asked some of these loan officers -- and we'll go through them one by one -- as to what the agreements were.

Now, the Government -- oh, what has happened after the whole thing crashed? Everybody, every man for himself. Banks, developers, everybody keeps pointing fingers to try to justify what happened in this country.

Now let's look at the testimony. I suggest to you in order to find Ellis Neder guilty of the counts charged in this indictment, you have to believe all, one hundred percent, lock, stock and barrel, all the testimony of at least eight witnesses; and at the same time disbelieve one hundred percent of the testimony of Mr. Neder, Dr. Fish, Mr. Boackle and everyone else, if the Government thinks they can prove these charges.

[Tr. 190] Now, who do you have to believe? Well, let's talk about Mr. Phillips, who came back the second time, the man from Greyhound who was here yesterday. Now, if

you recall, and the Judge will tell you this, you've got to look at the demeanor of the witness. Does he answer the questions forthrightly? Does he protest too much? That sort of thing. Mr. Phillips was a wheeler-dealer. He came in from Arizona during the height of the real estate market here looking to make a loan, looking to make a deal.

Mr. Neder had a deal that he was going to do, then he changed his mind, he couldn't do it. He couldn't do it because he couldn't show them a down payment, and he told that to Mr. Wankowicz. I can't show you a down payment. Show me a check -- I can't show it to you.

And he said, "Well, I'll tell you what I probably could do, I could probably..." because he wanted to syndicate this operation, "...I have a, I have a trust fund, a land trust that's also included in one of my divorces," he said, "...in my divorce. I could probably take the money and put it in there, but I'm not sure that's what I want to do."

"Well..." he said, "...why don't you give me an affidavit to that effect." So he said, "Okay." That's August 1st -- don't forget, that loan didn't close until September, before Mr. Phillips came down here. He said, "Okay, I'll give it to you." So, he in fact did send out [Tr. 191] an affidavit and in that affidavit he says -- okay, and all these things are also the truth -- Okay? -- there's one thing that is absolutely not true because he had never completed what he had anticipated doing, and the fact is that that money was going to go into a, was going to be in a private trust account and was going to be a down payment. Okay, that's not true.

But, what good is this affidavit because the deal changed. This affidavit doesn't mean anything because the deal changed. It was no longer a loan that required a down payment.

How do we know that? Mr. Neder told you. He said because we restructured the loan it became a collateral loan. Not a loan based on purchase price down payment, a collateral loan which we all know has a different meaning.

Now, Mr. Phillips can get up here and say thirty times unsolicited this was not a collateral loan, but he can't get any, we never waived the paper trail. You recall he said that the first time he came by here? I said, "Sir..." I said, "...do you recall..." -- and I showed him a copy of a memo. "I never saw that memo. We didn't waive any paper trail," and he almost threw the paper on the floor.

I said, "Well, didn't Mr. Neder send you a letter..." I said, you know, "...thanking you for the collateral loan?"

"That was just a thank you letter." And he almost [Tr. 192] threw that on the floor the first time he came back.

The second time he came back I confronted him again with these two pieces of evidence, ladies and gentlemen, Defendant's Exhibit No. 1 -- and I read it to you before he came back. I guess the Government felt we'd better bring him back to try and try to explain himself away on this one. Okay?

What did it say?

"Based on the site inspection he conducted on August 12th and 13th, 1986, Dave Phillips had determined that the appraised value of the collateral appears to be quite reasonable and should be ample security for the purpose of the Greyhound loan. Therefore, the credit committee comprised of..." -- so and so -- "...voted to recommend that the requirement of a paper trail verification of the borrower's equity..." -- meaning down payment -- "...be waived."

It doesn't say we accept the affidavit that was submitted on August 1st, it says, no. And what do they say we do, we

have looked at the property and the collateral -- and the appraised value of the property -- not the cost to Mr. Neder, the appraised value -- and we find the collateral to be adequate. That's an indication, ladies and gentlemen, that the loan did change.

Now, that's not enough. They didn't throw this away, [Tr. 193] ladies and gentlemen, and if they had we wouldn't be able to argue. Okay? We have this memo. Their paper trail, so to speak. We have it.

And I asked him about this letter that Mr. Neder sent them on September 15th, 1986, in which he says,

"Thank you for your efforts in regard to closing our loan with Greyhound concerning the Belle Rive property. I do appreciate your looking at the loan as a collateral loan and flying to Jacksonville and reviewing the collateral to be sure that the value is there. I believe this made a difference in the transaction being closed."

Don't forget, it was an on and off deal, on and off deal until Phillips came down and agreed to do a collateral loan, which I think makes that affidavit meaningless. It wasn't used so you can't defraud somebody who wasn't used. It's being used now because we're in a criminal case. It looks like evidence of a crime, but it's not. Mr. Neder should have asked for that affidavit back, but I guess he trusted who he was doing business with too.

They can't get around these two pieces of evidence, ladies and gentlemen. These two pieces of evidence tell you, and you can use your common sense, okay, that that loan was based on the collateral. How do we know that? Because he wasn't forthright with you.

I said, "Sir..." -- I said the first time, "...what [Tr. 194] about this letter?" "That's just a thank you letter."

"Is that all it says?" "That's all it says."

Yesterday we got into the rest of it. Read this letter. This letter says a lot more than that. It tells Mr. Phillips and everybody else where they're going to get their money, what bank account the interest is going to be in, it's going to be in Caribank, it's going to be $200,000 there. That's per our discussions. Your being signatures on the, on the accounts, you could just draw out the money. These are Mr. Neder's instructions on the loan, how they're going to get paid. That's not just a thank you letter like he tried to cast off to you that first time. Unh-unh. It's a very important letter.

He said, "I didn't pay any attention to it, it's just a thank you letter." Not so.

Ladies and gentlemen, when it comes to all those counts that go to Greyhound, okay, the wire fraud, you must -- you must -- not you may, you must acquit Mr. Neder of those charges because you need only one reasonable doubt on any of those charges, one reasonable doubt, and you've got two here, two reasonable doubts why Mr. Neder did not defraud Greyhound, did not commit mail fraud on Greyhound. That's how heavy their burden is.

Who else must you believe? Well, Linda Alexon who was here yesterday for the second time, her encore performance, [Tr. 195] who came in and says she remembers all these little specific details of her conversations with Mr. Neder concerning the reservation agreements, and all that. She can tell you there was absolutely no yellow sticker on the reservation agreement that was delivered in May of 1986. She can remember that. And she can remember all these other conversations and all the memos supposedly that she sent to Mr. Neder of the conversations they had.

I said to myself, well, that's pretty interesting. "Ma'am, can you tell me when you approved those things?" "No."

I said, "Well, when?" "Sometime in 1986."

"Ma'am, can you tell me when construction began on that project?" "Sometime in 1986."

She was the loan officer. They were partners. SFG was partners, Security First were partners in this project. And you mean to tell me that she can't remember those two important dates? What month they were in, what season they were in? No, she couldn't. But she's over here telling you that she can remember all these other minute details. She doesn't. You know what she's out here doing? She's out here covering herself. That's what she's doing.

She has a motive and her motive is she doesn't want to look bad, doesn't want to look culpable for what happened. But you can't, you can't get around it. Because on the [Tr. 196] stand in cross examination she couldn't tell you the important things, but she supposedly remembers all the small things that occurred.

I also asked her about her responsibilities on those, on those reservation agreements. I said, "Doesn't the commitment say that you're supposed to confirm?" "Oh, no, we're just supposed to call the escrow agent." It's the escrow agent's job, supposedly, to call the people and confirm. That's not true. Escrow agents -- and we had testimony -- they handle the money. If there's a dispute they send it where it's supposed to go. Escrow agents don't supervise construction, they just hold the money, a neutral party that holds the money. They're not supposed to do that.

Now, wouldn't it be stupid for Mr. Neder, a lawyer, to go down to Daytona and hand twenty-five reservation agreements if he was trying to conceal something with people's

names and phone numbers on there? Amend them, as he did, okay, without them knowing, without their permission and leave them there? Of course it would, it stretches your common sense. A thief doesn't do that. Somebody that's out to defraud doesn't do that. That's not how it happens.

She was supposed to approve and confirm them. I asked her, "Did you approve them?" "Yeah, I did."

"When?" "I don't know, sometime in '86."

[Tr. 197] But she can remember, supposedly, that day when Mr. Neder came down to deliver them. That just doesn't make sense. It makes no sense at all.

You heard Mr. Neder testify. He's not a stupid man. And, yes, even though he's not a real estate lawyer, he's still a lawyer, and he's got basic common sense. He wouldn't do something like that unless they agreed.

I also asked her, "Is there anything in that loan agreement that prohibits the developer putting down the $500 deposit?" She said, "No."

"Is there anything in that loan agreement that prohibits equity sharing?" The answer to that was, "No."

The prosecutor would argue that we were concealing this equity sharing, but that's not true. You saw the contract. Mr. Turner testified about the contract. It says, you will cooperate with all the lenders. There was a non-third-party disclosure, but that's different.

I asked her, "When you read them together, what do you do?" She said, "You tell the lender everything but you don't tell anybody else." Okay. That's not concealment. And there's nothing to prohibit that from happening. Nothing did.

Now, once again, you can't defraud somebody -- now, Mr. Neder also testified that he had this whole conversation with Mr. Singletary, who is also an officer of Security [Tr. 198] First, he was the one who was also in charge of the partnership at SFG when they went into partners with the developer, and he told him everything about these, how he anticipated doing the equity sharing, how he was going to do the reservation agreements; and that testimony, ladies and gentlemen, is unrebutted.

The Government didn't bring Mr. Singletary back to say that Mr. Neder was lying, did they? No. So you know he's telling the truth. They brought back everybody else they could think of to tell you he was lying, lying about the weather, lying about everything else, but they didn't bring Chuck Singletary back, because Chuck Singletary knows Mr. Neder told him that. And he was the party that was responsible for the bank's forty percent. Okay.

Now whether Alexon and Singletary talked, I don't know. I know one thing, they work for the same people and Neder was dealing with both of them.

I also asked Ms. Alexon, I said, "Well, how many people work in that office?" "Five -- six, maybe."

Now, Mr. Neder didn't say I gave them to Ms. Alexon, he said, "I went down there, I changed them, I amended them, I revised them in her office over there and I gave them to somebody who worked there." Did they bring anybody back here to say that didn't happen? Of course not.

Now, let's talk about the acquisition on Southern [Tr. 199] Grove. Mr. Neder did the same thing on Southern Grove that he did on all the other projects. He contracted to buy it at a certain price through a nominee corporation, he had it appraised, and then he financed it at the appraised value, which

was, like Dr. Fish said, very common back then. Now, that appraisal was more than twice what the purchase price was on Southern Grove. Now, think about it. Did the prosecutor bring in anybody here to tell you that that was a false appraisal? No. That there was a conspiracy there with the appraiser? No.

That appraisal was done by Johnson, Grainger or some other firm, and it came out more than twice what the purchase value was. But they tell you, by the same token, that what happened with Mr. Neder and Mr. Smith and Mr. Fogg was impossible, you can't get property appraised at twice the value unless you work with a corrupt appraiser.

Well, how come they didn't make a big stink about Southern Grove. If it can happen to Southern Grove, it could happen ten, twenty times, who knows how much property you can find, because don't forget what's going on with property at that time. That made sense, you weren't buying raw dirt, you were showing them what you're going to do, and it had a higher value for a higher use.

Didn't the fellow that had Belle Rive make $400,000 just by holding an auction on it? He wasn't -- I asked him, [Tr. 200] "Did you get indicted?" Of course not.

But it was happening, so why is it so unreal that can happen. The Government obviously agrees that Southern Grove was no scam as far as the appraisal goes, or else you would see those appraisers sitting there as well, and we'd hear about it. But they didn't. They want you to have it both ways. It didn't happen.

Do you know what the Government is going to have you -- you're going to have to believe one hundred percent to convict Mr. Neder of any of these counts involving Reddie Point? Mr. Stanley Burns and Mr. Paul Adler. Some of you seem to smile -- yeah, that is a joke.

You know, there are charges in the indictment of RICO, racketeering. I suggest to you, ladies and gentlemen, there's been no evidence of racketeering on the part of Mr. Neder. The closest thing you got to see to racketeering, ladies and gentlemen, were those two characters, Burns and Adler, right out of The Godfather -- those two.

Can you imagine -- and I recall, we had to call them back again, didn't we, let's talk about their testimony.

He denied vehemently -- okay -- that he ever had any kind of arrangement with Mr. Neder. I think he denied, first of all, "I had no say-so on that, on that loan. I had no power, I was just acting on behalf of the union." He had to be cornered, I said, "Wait a minute here, you have [Tr. 201] the absolute power of attorney."

Remember he talked about, "Well, that loan commitment is the Bible, and it can't be changed," and I asked him, "Well, this power of attorney says you can change anything there, doesn't it? So I guess that, we know what that makes you."

"Oh, I could, but I wouldn't." He could but he wouldn't.

He had absolute power. And where did he get his power? At the time he was involved in the union he got it from Mr. Campbell, who was the president of the union. Mr. Campbell, whose son he had doing his lackey work for him, and his other son he had -- I'm sorry, his grandson he had, who was doing lackey work for him, and his son, who was his attorney and for the union, for both Adler and the union. Talk about a conflict of interest? That's where Adler got his power, and he could do anything he wanted.

So what happened? The regime changed down the road. Okay?

But before we get to that, think about what Adler said. He came in here and he said, I did everything I could for the Brotherhood; Mr. Neder's a thief, he's this and that, I thought I was dealing with honest people, and I would never, never approve of allowing Mr. Neder to borrow against the construction draws. He said that. Never. Never approve of [Tr. 202] that.

Everything in that construction, in that loan agreement had to do with construction. I asked him about that $400,000, what did that have to do with construction. Was that part of all these draws? Is that in this, in this document here that tells you, is there anything that says you build something for that $400,000? He couldn't answer that. No, that's just a side, a side thing.

So it's not true. That $400,000 went to something that had absolutely nothing to do with Mr. Neder or Reddie Point. That was the cost of doing business, that he had to pay the loan of somebody else, because that's what Adler came down to do, collect the loan for somebody else, and he felt Mr. Neder was eager to do business and he's going to make money. So he said, "Well, fine, you pay that and we'll go ahead." And then we brought him back -- oh, then I asked Mr. Burns, "Mr. Burns..." I said, "...are you having some problems with the union right now?" He says, "Oh, just a breach of contract kind of thing, nothing important." I said, "Oh, really? We'll talk about it again," I said, and I brought him back, ladies and gentlemen.

Do you remember the testimony the second time he came back? I asked him, "Sir, just a breach of contract?" "That's all."

"Well, how about breach of fiduciary duty?" "Well, I [Tr. 203] don't know too much about that."

"How about fraud to the tune of 1.5 million dollars that you, the union says you've stolen from them by submitting false invoices of your own for your services?" "That's just accusations, that's just accusations."

Do you recall that? He didn't tell you about that the first time. We had to bring him back to get that out of him.

Well, I suggest to you, ladies and gentlemen, not just Mr. Burns, but anybody who will submit false invoices of their own and think nothing of it, and cost the union something like seventy million dollars, eighty million dollars, I think that's what he said all those bad loans were that they were monitoring all over the place, would think nothing about telling someone to go ahead, borrow against the account, and when you get the additional funding -- and they said they were looking for additional funding for Mr. Neder from other unions if they could -- you can put it back. That is reasonable. That could have happened.

Now, Mr. Neder didn't like that. He didn't like doing business like that. He was desperate, so what did he do? As soon as there was a change of regime he said, "I want these guys out of here." Even before this, actually just when Mr. Lucassen took over, he said, "I don't want to do business with these guys like that." And he was frightened [Tr. 204] of them. This is what they told him to do and they had every right to tell him he could do that. They had that complete power of attorney to do that, although they deny it, deny ever saying it. No choice.

Mr. Adler. "Mr. Adler..." I said, "...do you recall having a conversation..." I said, "...with Ms. Kreiger, who is the general counsel for the union in Washington, D.C., concerning this loan?" and I gave him the date. And I told him I had a memo here from her desk, okay, where there's

quotations about, "We acted real bad in Jacksonville." Do you recall that?

I said, "Did you tell that to Ms. Kreiger?" He goes, "Not me."

I said, "Are you saying those are her words?" "Yep, must be her words, I don't talk like that."

Right. Right. He doesn't talk that. He lied. He knows darn well, common sense tells you some woman lawyer up in Washington is going to write that down in quotes when she's talking to Adler? Because that's the same language he told Mr. Neder, he said, "I don't care what you do, just put a f-ing invoice in there and we'll straighten it out later." Okay? You can believe that happened a lot better than you can believe that this lady attorney up in Washington put in quotes, "We acted real bad here in Jacksonville."

That was Adler talking. He admitted he had a [Tr. 205] conversation with her, but he said, "That wasn't me, that's her." He lied. A bald-face lie. We know why he lied. Okay? Because I went further. "Wait a minute, now, you can't get on this stand and confirm what Mr. Neder said, can you, because you're being sued by the union, and that would be an admission and you'd lose." He had no answer for that, but we all know the answer. The answer is, "Yeah, I can't."

But you can't sit here and lie and lie and get away with it. You can't get around the fact, also, that he had a motive. And we also know that Mr. Neder was getting pretty concerned, he wasn't going to get the other seven -- by the way, they had negotiated, Michael Loyd told you that, for twenty-one million dollars originally -- that he wasn't going to get the other seven million dollars. Okay? The union just was getting out of the real estate business. They said that. That was the decision, policy decision they made -- so Mr. Neder

wanted some assurance as to what had transpired, so he asked him to write him a letter.

On April the 19th, he wrote him that letter, and it said in that letter,

"As registered investment advisors for the United Brotherhood of Carpenters and Joiners of America, we have reviewed and researched your request for additional funding in the amount of seven million dollars in the above mentioned subject..." -- which is Reddie Point -- "...and [Tr. 206] find it to be in accordance with all prudent principles of lending."

Okay, "We have reviewed and researched your request."

"Our experience with Neder Properties has been favorable to date and we look forward to working with you on this matter."

Okay, they're looking also to find another seven million dollars elsewhere because they couldn't do it.

Reviewed and researched -- okay? -- Mr. Neder wanted some kind of assurance.

Now, you ask yourself, why would Adler and Burns and Empire Consulting want Mr. Neder to stay afloat for ever how long? And the answer is simple, because Exhibit 76 tells you why, because they were billing Mr. Neder three and a half percent of the draw money, $28,000 on that draw. Okay? They said they never received a dime from the union, they never received -- they weren't making any money on this. Here's an invoice, ladies and gentlemen, dated March 23rd, 1988, almost a year after the loan was in effect -- they were milking Mr. Neder, they were milking the union, that's what they were doing.

Now, I asked Mr. Willertz, over here, I said, "You know..." I said, "...did you ever think about what's going on there between Burns and Adler?" And he says, the man who's suspicious of everybody and everything says, "I had no [Tr. 207] reason to believe that they did anything criminal."

Let me tell you something, ladies and gentlemen, I'm no FBI agent, never will be, never have been, no investigator, but I'm stationed in Washington with the Labor Department, I know it's a lot easier to walk -- Washington's not that big of a city -- to walk over to the union headquarters, perhaps, and ask a couple of questions than to fly down here to Jacksonville -- okay -- and tell me that this man's a criminal, that he did something criminal. Why doesn't he ask the union what they think. If I can find evidence that the union is dissatisfied and they're accusing them of stealing 1.5 million, the U. S. Government can't do it?

They don't want to hear that. They want you to believe what you have to believe, one hundred percent Adler and Burns, before you can convict Mr. Neder of anything illegal at Reddie Point, because they had the power. He told you they told him what to do, and even if it's wrong, morally wrong, it's not illegal, because they could tell him to do that and they had the power to change it.

That, ladies and gentlemen, is what happened at Reddie Point. Mr. Neder, not on his own, decided that he was going to put in false invoices, inflated invoices, okay, and get audited -- because, don't forget, they did come down a couple of times, they came down in October, they came down a couple of times.

[Tr. 208] When you -- Mr. Kunz says, "Well, they can't see if there's any pipe under the ground." When you spend twelve or thirteen million dollars and nothing is changed, a red flag has got to go off. No red flags went off in their

brains. They didn't complain to anybody because they knew exactly they gave Mr. Neder permission to do that.

Use your common sense.

A practice that they were doing, and now Mr. Neder wasn't doing it for the same purposes that they were, he was waiting for the additional funds to come down. And Mr. Moore told you that. He said, "Yeah, we kept a running -- matter of fact, it was in a memorandum of Mr. Moore, I believe, in evidence -- right here, Defense Exhibit 81, where Mr. Moore says, this is the status of all those invoices, this is how much we have to -- we have to pay it back, and as soon Burns or Adler find the money somewhere else we'll pay it back, he said.

I said, "Mr. Moore, did you and Mr. Neder always talk about paying it back?" He said, "Constantly." That wasn't a method to steal the money, keep the money. They had every intention, they had this structure to pay it back. That's an idea that Burns and Adler said should happen, not Mr. Neder. If you can't believe Burns and Adler, you must acquit Mr. Neder on Reddie Point, just as you must acquit him on Greyhound, unless you can believe Phillips and now [Tr. 209] Adler and Burns one hundred percent, because if you only believe them nine-eight percent you've got a reasonable doubt, and the Judge will tell you if you have a reasonable doubt you must acquit the defendant. Not you may, you must; that's how the system works. It's that severe. That burden is so heavy, ladies and gentlemen. Mr. Neder did no wrong at Reddie Point. All the counts regarding Reddie Point must be acquitted unless, and only unless, you can buy Adler and Burns one hundred percent.

That power of attorney, ladies and gentlemen, that allows him to rewrite his Bible and make him God for all practical purposes, is Defense Exhibit No. 10. Read that and

see how absolute that is, the power these people gave him, this union gave him. Read it.

And originally Mr. Anderson had this power of attorney, and Mr. Adler didn't want that, Mr. Anderson testified. We want it, we'll take it from Anderson, who's Anderson, some Florida lawyer down there who was once in an adversary position with the union. No, we want it, and they had it. I'm sure they had it in all the other projects, seventy million dollars that they were responsible to the union.

And they also told Mr. Neder when Mr. Neder questioned them about the practice of doing that, "Well, that's what we do with the Carlisle Group in Baltimore." How would Mr. Neder know that unless they told him that. Make it up [Tr. 210] himself? Unh-unh. That's what they were doing, and they were doing it for their own greed. They were milking two people, the union and Mr. Neder.

Now, you say, well, what if the union didn't give Mr. Neder the seven million dollars?

Oh, by the way, ladies and gentlemen, you read these instructions. Remember the Government put in something real thin, we put the whole thing in here for you to read, because they said that supposedly Mr. Neder's construction, Carpenters Construction Company had taken five hundred some odd thousand dollars, which isn't the case; but also in here is the same address and, oh, supposedly they didn't know who Management Constructors were. How can they not know when the invoices -- supposedly Mr. Burns is out there with his eye shades on and they're doing the accounting, realized it's the same address as Mr. Neder, the same people involved, Mr. Freeman, the people that he met here. He had to know. That's a lie.

But also, ladies and gentlemen, you'll find that Mr. Neder had almost four million dollars of discretionary funds in this, in this loan to do what he wanted to do; admittedly, to be used at Reddie Point, but they were discretionary. He didn't have to account for that.

And what was the fall of Adler and Burns?

Oh, and besides, the union didn't give Mr. Neder the [Tr. 211] other seven million because Mr. Burns and Mr. Adler couldn't find some other union to give him the money.

Mr. Neder and Mr. Moore had a plan on paying that money back, and one of them was that they would forego the income from the club. They had a developer's advance budget they could've taken it out of to repay back, and they also had a marketing budget which they could've taken it and paid it back. They had the means of paying it back.

And this whole thing about the archaeological find not inhibiting construction. Now, you use your own recollection, but that man was just here yesterday and he said -- and the first question I asked him on cross examination was, "Sir, did you testify that ninety-five percent of the property was released on the 15th of January?" He goes, "Yeah."

"Then I would assume, sir, that the property was tied up before January." He goes, "Yes, it was."

Maybe the cease and desist order didn't come until May; however, that property couldn't be constructed on at least before January 15th, and after January 15th, five percent of it. I asked him which five percent, I said, "The ones going in?" He goes, "Yeah." Now, that's where we had testimony that patio homes and the single development homes were going. They were the first ones to be scheduled. For all practical purposes, ladies and gentlemen, it was, Mr. Neder [Tr. 212] didn't lie, construction did come to a standstill because they

couldn't build on that five percent on the entrance. He wasn't lying about that.

Then the cease and desist order came in May, then it wasn't released again until the fall, in October. So that property was paralyzed. Nobody is deceiving you about that.

Now, I'm sure there's somebody else you have to believe a hundred percent to find Mr. Neder guilty of this conspiracy, and this fraud that involved inflated land values, and that man is Harry Smith, the great appraiser from the IRS. A pleasant gentlemen who sat up there and told you with a straight face, okay, even though he had no credentials, that he was an appraiser, and appraising is a simple thing. You use one formula; you use it for cemeteries, you use it for hotels, you use it for gas stations, you use it for apartments, condominiums.

Well, ladies and gentlemen, every other appraiser, and especially appraisers called by the Government, and certainly the appraisers who are on trial here, rebutted that testimony. That is garbage. This man doesn't know anything about appraising.

And besides that, think about where he's coming from. Okay? Because attitude is another thing you can consider from witnesses on the stand. Look at his attitude. In all his reports he said, "I'm from the IRS, and we're presumed [Tr. 213] correct." Wow. Tell me that's an unbiased opinion of the value of a piece of property. Tell me who would love not -- who would love going through life with the presumption of being correct, because that's what the IRS does.

The same thing in tax court, John Gay told you the same thing, but we're still correct. Well, that's fine and dandy, maybe it applies in tax court, but not here. This is a criminal court and whether you like it or not, Mr. Gay, whether you like

it or not, Mr. Smith, we're presumed correct, we're presumed innocent. Don't get up here and tell me you're presumed correct, especially when you don't know what you're talking about. And he didn't. And I think that all of us are junior appraisers from all the appraisal testimony we had, and we all know that everything Mr. Smith said is foolish. That's Mr. Harry Smith is foolish.

And what did he do, besides the fact that he says, I'm presumed right and -- I said, "Wait a minute, now, you're with the IRS, right, and you get a call and it's from your criminal investigation division, right? Now, your job working for the IRS..." -- remember these questions? I said, "...is not to go out there and say, hey, Mr. Taxpayer, you know something, I think you were too modest in your deduction of that gift that you gave, I'm here to appraise it to make sure that you're able to take a bigger deduction." I said, "That's not what you're going out there [Tr. 214] to do, is it? That's not your mind set." "No, not usually, it's the opposite." It's the opposite.

I said also, I said, "You got a call from your CID division, what is the CID division?" He goes, "I'm not sure what it stands for."

I said, "Doesn't it stand for criminal investigation division?" "Oh, yeah, I guess you're right."

Now, think about it. This is an IRS agent, appraiser, and like all IRS people they presume they're right, who's going to go out now and value some property for a criminal investigation for the Government. You tell me that this man is not going out with an attitude? He's going out with a fair and open mind? Give us a break.

I said, "Sir..." -- I said, "...you know, these people are accused of giving false appraisals and lying." I said, "Now, would you do anything like that?" He goes, "Of course not."

"Well, you know, why would you think..." -- and he said, "Well, you know, I don't know..." he said --

I said, "How about the people you called up?" Remember that conversation, I said, "You called up to find out whether or not a marina was a feasible thing." I said, "How did you do that?" "Well, I called people who owned marinas."

I said, "You did, hunh? You said, 'Hi, I'm from the [Tr. 215] IRS, how's business?' Right?" I said, "What did you expect them to say? I was too modest last year, come and audit me or expect a big, big check this year?" Of course not.

When people talk to government agents, I don't care if they're IRS, FBI, Labor Department or anybody else, it's only natural you're concerned.

Now, Mr. -- and you know, I --

And then I said, "Well, you know, how did you know whether they were telling you the truth?" He goes, gratuitously he offers this, "Well, that's between them and their Lord."

Now, ladies and gentlemen, I've heard the Lord's name used in conjunction with the IRS but not in that context. Okay? And it shouldn't be done.

So why did he say that? Was he over there trying to tell you, puts his hand on the top of his head and tells you what a religious person he was? Was that what he was trying to do? Well, if he was, that's pretty cheap, because ladies and gentlemen, the Lord has nothing to do with the IRS, and probably would never approve of the IRS.

But in any event, he protested too much, and he didn't know what he was talking about, and I'm sure the attorneys for the appraisers will deal with that issue in greater detail.

But Mr. Kunz said something very, very interesting. He [Tr. 216] said, "In order for Mr. Neder's scheme, for his plan to have worked, he needed cooperation of criminal appraisers, bogus appraisers."

Now, if we follow that logic, in order for you to find Mr. Neder guilty of anything -- and I think that's what Mr. Kunz was trying to get at -- you have to find the appraisers guilty. Well, I suggest to you, ladies and gentlemen, there's no way that anybody can find these appraisers guilty of anything, and if they're not guilty of it, then Mr. Neder's not guilty of it, if you follow Mr. Kunz' argument and his logic.

There isn't a shred of evidence to say that these appraisers were bogus.

Harry Smith, you took notes on this, go back and apply Harry Smith's principles. Think about what he testified to. And I agree in order to find Mr. Neder guilty you have to find them guilty and there's no way that they're guilty of anything.

For this scheme, for this conspiracy to work, you have to have inflated property, do you not? Well, we know at Southern Grove there's no question, even though it was appraised twice the value, nothing wrong with that, so we know that property can be appraised for twice the cost and not be a criminal act. Therefore, if they've done nothing criminal, then Mr. Neder certainly hasn't done anything [Tr. 217] criminal.

Well, this is a criminal case. What's a criminal case about? It's about -- when you talk about fraud and theft, it's about stealing. The appraisers went under the same scrutiny as Mr. Neder did, by IRS, Labor Department, and everybody else, every agency you can think of. Did you see any evidence of pay-offs? I mean, why would somebody commit a crime, put their reputation on the line? For their regular fee? Of course

not. You've got to be a moron. You heard from both of them, they're not morons.

Okay, that's where the Government's case is at fault. There's nothing phony about the appraisals that Mr. Neder got from those people. And the fact that Mr. Neder asked them what they thought the worth was, that Mr. Neder suggested what he thought the property was worth, there's nothing wrong with that. It would be unbelievable if a principal, somebody who owned a piece of property, didn't suggest -- who wanted to have it appraised, didn't have an idea or didn't tell the appraiser what he thought it was worth. There's nothing illegal about that. Nothing at all. It's quite common, the unusual thing, if he said, "I have no idea what it's worth, you tell me." Of course not.

For that, people go to prison? I should hope not.

Now, these appraisers of these properties, okay, and there's like maybe ten parcels we're talking about, are not [Tr. 218] the only properties that Mr. Neder looked at. He looked at a lot of property, okay, but they weren't the kind of property that had the kind of bargain value that he found. He looked at thirty, fifty, a hundred pieces of property over that period of time. The fact that he limited it to ten pieces of property that were being sold a lot cheaper than what they could be appraised for and developed for, is not unusual.

If you bought thirty pieces after looking at thirty pieces, maybe. But he testified, he looked at a lot of pieces. He had discussions with appraisers all the time on property he may look at. There's nothing wrong with that. They're appraisers, you can talk to them and ask them what they think. And supposedly telling him that he found this piece over there, somewhere where The View is and that there's another piece that sold there for approximately that, and what do you think, is that telling him you've got to give me an appraisal for this price? No. He

says, what do you think? He's asking him for a suggestion. You can't read more than that into it.

So that letter from Mr. Neder is certainly not the letter that aids and abets anybody to give a false appraisal. They're asking -- he's asking for an opinion.

THE COURT: Do you want to take a break here?

MR. FALLIS: Sure.

[Tr. 219] THE COURT: Okay. Ladies and gentlemen, why don't we take a ten minute recess.

Don't discuss the case amongst yourselves, and keep an open mind.

(Recess 4:00 p.m.)

THE COURT: I want to see the lawyers.

THE CLERK: You want to see them at sidebar?

THE COURT: Yes.

THE CLERK: Counsel, would you approach sidebar, please.

(At the sidebar.)

THE COURT: How much more time do you need?

MR. FALLIS: How long have I been on?

THE COURT: An hour and twenty minutes.

MR. FALLIS: Really? About another hour.

THE COURT: Okay, so that means you won't go today. We'll let him finish.

Okay, we'll stay until you finish.

MR. FALLIS: Sure.

(Recess 4:01 p.m.)

(Court in session 4:09 p.m.)

THE COURT: Mr. Makofka, you want to see if the other defendants are coming in?

All right, bring the jury in.

(Jury present and court in session 4:12 p.m.)

[Tr. 220] MR. FALLIS: Ladies and gentlemen, the prosecutor made a big deal about the fact that Mr. Neder bought a Porsche, a used Porsche, by the way, and he had given his daughter the car, and it supposedly came out of the funds of Reddie Point.

Well, ladies and gentlemen, if you'd read -- I hope that you would -- okay? -- the schedules in here and the agreement, you'll see that Mr. Neder had a 1.2 million dollar developer's discretionary fee, something that he was entitled to. It doesn't say that you can't use it for your own personal use.

Don't forget what the Labor Department told you, we're not accusing him of stealing the money, we're accusing him of diverting it. Okay? There is no law that says he can't divert money that he borrowed. None. That's not a crime. It might be, as I said in the beginning of my closing, cause for a civil action of negligence, breach of fiduciary, but it's not fraud, and it's not a crime, he's not charged with that. Just keep that in mind.

Now, we just finished talking about Mr. Smith from the IRS, and there's one other fellow we need to talk about from the IRS, and that's Agent John Gay.

Once again, ladies and gentlemen, the IRS has got an attitude. They give them that attitude because they're told they're right and everybody's wrong, it's an us and them [Tr. 221] kind of attitude; and you, Mr. Taxpayer, are wrong until you prove yourself right.

Don't forget, in order for you to find Ellis Neder guilty of the tax counts you have to conclude beyond and to the exclusion of all reasonable doubt that when he took these loans out, number one, he had no intention of repaying them. Now, that simply just doesn't hold water, given the evidence. Not when somebody takes that money and invests it back in business, back in business, signs for it personally. That was the whole point. Of course he intended, at the time he took those loans, to pay them back. In other words, he had that criminal intent when he signed that loan application, I'll just take this money and I ain't going to pay it back. Okay? Nothing -- this evidence does not dictate that kind of conclusion. Nothing says that. The opposite is true.

He built an organization. Somebody who's looking to steal and defraud doesn't do that. Why should he spend a million dollars on payroll? Why should he spend so much money on architects? You only -- you saw a fraction of the plans that went into this development. Ms. Ray gave you a chart and showed you where this money went. It didn't go into Mr. Neder's pocket, it went back into the projects. So his intent, you can deduce his intent from what he did with those proceeds.

[Tr. 222] Sure, there were excess proceeds. Now, this circular reasoning, this hypothetical who-knows-what that only the IRS can think of -- okay? -- because you're going to use your common sense, how can there be profit on borrowed money? There can't be, you owe the money; unless you're released of it, then there's a profit. And if Mr. Neder and the

nominee are one and the same, and he sells it to himself and he borrows the money and guarantees it, where's the profit? He's got to pay it back.

Yes, there is a profit if he turns around and sells it again and makes a profit on it -- but that didn't happen in this case -- or, once he's constructed the project and he sells it off. That's common sense.

And, you know, Mr. Kunz said, well, Mr. Brooks said if this happened, this happened and this happened, that it would be profit. No, that's not what he said.

On cross examination, Mr. Kunz gave him a hypothetical, he says, "Well, if he was planning on not giving it back at the time, would that be taxable?" He said, "Of course, it would." We're not arguing with that, because that's not what happened.

What Mr. Kunz told Mr. Brooks was his theory of what happened, that this is a fraud. Then of course Mr. Brooks, being an honest CPA, said, "Yeah, of course it would be," because he knows §61 as well, of the IRS Code.

[Tr. 223] So that is circular reasoning and smoke thrown at you to make you think that there was a profit. There ain't no profit, you walk away with a profit. You pay back loans, and until that loan is released or discharged there's no profit. Did anybody discharge Mr. Neder from those loans? Of course not. Some took their property back and some sued for the balance, we know that. Nobody discharged him from that obligation.

Another thing, why would you put everything you have on the line as a personal guarantee. You remember with those loan officers we went through all the reasons they gave Mr. Neder the loan. Okay? Personal financial statement, reputation, value of the property, and everything else. Okay?

But they all said, but if we knew that the property was bought for less we never would've done it.

Baloney, they gave five good reasons for giving that loan, and that's why they did, and that's why he took it, not -- not to deceive them or defraud them, or line his pockets because, ladies and gentlemen, again, common sense, Mr. Neder would not have thirty-eight dollars in his pocket last week if he was out to defraud and steal. Any idiot could've walked away with this with a lot of money, any thief could have; but only an honest person, who had no intent to defraud, would've come out of this thing broke; and he testified and it's unrebutted, that he is broke.

[Tr. 224] Talk about the IRS again. John Gay got up here and said -- and the Judge will tell you -- think about the demeanor of the witness, any stake in the outcome, that sort of thing. What did John Gay tell you? He sat here, "I looked into all the evidence and I concluded in my expert opinion he tried to defraud; therefore, it's taxable income." Think about that. And when did he make that statement to you? In the Government's case before he heard one shred of evidence from the defense.

Is that an unbiased, expert opinion, when you hear one side of the story and you conclude it before Mr. Neder got on the stand, before Mr. Brooks or anybody else got on the stand to say what they think happened? Are you going to take that opinion and buy it? I should hope not, because you took an oath that you'd listen to both sides of the story.

He didn't have to because he's from the IRS. He's presumed right. He's told you that all the time, that in his expert opinion after hearing half the story, Mr. Neder's guilty.

And now the Government's telling you, this is my expert over there. He's right. What? When he heard half of

the story? No. He's prejudiced, he's biased, he's got an attitude; and the best, the best tale-telling sign is the last thing he said, "I never lost one." When I asked him, [Tr. 225] "I never lost one." Well, ladies and gentlemen, to me that's a challenge and I believe a lot of Americans would love to take up.

I don't know if he's ever lost one or not. That's what he says. But this is one that he needs to lose. He needs to lose this one, ladies and gentlemen, because he gave an opinion without hearing all the facts, only what Mr. Kunz told him. Without hearing from Ms. Sprague, without hearing from Mr. Brooks or anybody else. So you know what you can do with that opinion, you can take it and toss it in a pail because he didn't have the whole story to judge it on. And that's what the Government wants you to find him guilty on, one man's opinion who heard half the case.

You can't do that. You've taken oaths not to do that. You promised you would listen to both sides of the story and come to your own conclusions. You didn't say, I'll sit here and after the Government's case I'll make up my mind. You didn't say that. So anybody who does sit here after the government's case and makes up their mind, their opinion is worthless to you and you shouldn't even consider it.

Use your common sense. How do you owe taxes on the money that you owe? It's just simple, as Mr. Brooks said. You get a second mortgage. It's worth more than you paid for it, you get a second mortgage. Do you owe taxes on that second mortgage? Of course not. It's the same principle, [Tr. 226] it's exactly the same principle. And all these hifalutin accounting principles mean nothing if your common sense tells you that's impossible; and what's more important than that, if you think that that's wrong. Because as I said, ladies and gentlemen, you're the most powerful people in this courtroom.

You don't take your orders from them, you don't take your orders from anyone.

You're here to make sure that this Government doesn't run amok and convict innocent people by sheer use of their power, and it's awesome.

Think. You've been sitting here. Think of all the people you saw sitting at this table during the course of this period of time, think about it. All the agencies. That's awesome power against one defendant with one lawyer.

You know this whole thing about Mr. Neder having money, supposedly he had money off shore to hire a lawyer, we know that's nonsense, because if that were true you wouldn't be looking at the likes of my cousin Vinnie over here, you'd be looking at F. Lee Bailey or somebody. Okay? We know that. So that's completely untrue. That was just something that was thrown out there just to put in the back of your mind. Well, they couldn't back it up, ladies and gentlemen, there is no such person and Mr. Neder never made that comment. It's just me and Mr. Neder against the United States government, ladies and gentlemen, and your job is to level [Tr. 227] that playing field, to make sure that that awesome power, that isn't abused.

That the thing that our founding fathers were so concerned about doesn't happen, that that power becomes so arrogant and so absolute that private citizens can't even fail in business without being accused of a crime.

There was no crime, ladies and gentlemen, in any of these transactions.

Now, you will have to believe somebody else, ladies and gentlemen, somebody that the Government wants you to believe half the time and not, the other half time not to; but they're not sure what part they want you to believe yet. I guess

maybe Mr. Kunz will get back on in his rebuttal and tell you what part. And who is that? Tom Turner.

Tom Turner, and I'll tell you, ladies and gentlemen he looked like an angel, looked like a choir boy. He is the Government's key witness, numero uno. And who is he? Mr. Kunz asked him, "Mr. Turner, did, in everything you said here did you tell the truth?" "Yes, I did." Well, Mr. Kunz wants you to believe some of what Mr. Turner says. Okay? He probably wants you to believe all of it.

Well, who is Tom Turner? Tom Turner is an admitted thief, okay, and an admitted criminal. Okay, that choir boy pled to a crime that had absolutely nothing to do with Ellis Neder. Nothing. Remember I asked him about that, I said, [Tr. 228] "This Mallard Landing thing, remember that?" "Yes, yes, I pled to that." "And you pled to one other thing about a false statement." That thing, remember it didn't have a thing to do with Ellis Neder -- okay? You can't believe Tom Turner. As well as he was rehearsed, you can't believe him, he's an admitted liar. And I'll tell you why you can't believe him.

The Court will read you these, you'll take these instructions back with you. These instructions -- and I've referred to them before -- will tell you what to do with Tom Turner's testimony, and I'll show you. Not only -- I'll tell you where he came back and he did lie to you again and I'll prove it to you -- but this is what the Court's going to tell you,

"The testimony of some witnesses must be considered with more caution than the testimony of other witnesses. In this case the Government called as witnesses persons named as a codefendant or accomplice in this indictment with whom the Government has entered into a plea agreement, providing for the dismissal of some changes and/or less sentence than the witness would otherwise be exposed to for the offense or

offenses for which he or she pled guilty, or has been granted immunity.

"Such plea bargaining is proper..." -- okay, there's nothing against plea bargaining -- "...however, a witness [Tr. 229] who hopes to gain more favorable treatment in his or her own case may have a reason to make a false statement because he or she wants to strike a good bargain with the Government.

"So while a witness of that kind may be entirely truthful when testifying, you should consider that testimony with more caution than the testimony of other witnesses."

Now, ladies and gentlemen, that's -- that is the biggest caveat. That's like crossbones on a bottle. I suggest to you that testimony is poison.

And you remember in cross examination I said, "Mr. Turner, the day's going to come when you're going to be standing here with Mr. Kunz here, your lawyer over there, and you're going to be before some Judge for sentencing, and your agreement with the Government was that they're going to get in your corner, they're going to say what a great guy he was, he gave great testimony, he's rehabilitated, Judge, go light on him," something to that effect. He says, "Well, I don't know if that's going to happen."

It's right there, it's a plea agreement. He's a lawyer. It's a contract, he read his plea agreement. He can play cute all he wants, he knows darn well that's what's going to happen.

Now think about it. Mr. Turner was charged in forty-three counts, looking at two hundred years if convicted. Okay? And what did the Government do? They threw out over [Tr. 230] two hundred counts (sic) and let him plead to three counts. Let him plead to three counts. Threw out a couple hundred years worth.

Now if the Government -- and he was charged basically in the same charges that Mr. Neder had, it was the same charges except that Mr. Neder probably has more charges, the indictment will show; however, the Government just threw out those counts. No asking. What does it say about those charges in those counts? One or two things, and either one of them is very relevant to this case.

Number one, that the charges in that indictment are bogus, inflated, because they can put anything in the charge, they can charge anything they want, they've got that power -- okay? -- and they, the Government is not convinced they can prove it anyway. Now, if that's true, then the same thing holds true for the charges against Mr. Neder. If the Government can so easily throw away, throw away forty counts and a couple hundred years worth of penalty, what does that say about that indictment and those charges. They've got to be bogus.

It also says something else. The Government didn't just do that, they created a fiction with Mr. Turner, and they said that your criminal activity stopped on November 27th. Do you remember the significance of that? Because that makes him eligible for parole. After one third of his [Tr. 231] sentence he can go out on parole because of that fiction, which means even if he gets the maximum, the maximum, which is probably doubtful if the prosecutor's going to be in his corner, then he gets fifteen years. He could be out in five years. Okay? That's a heck of a deal.

And I suggest that Mr. Kunz tried to tell you that maybe some of our witnesses, who are, quote, being paid, would taint their testimony – okay -- because they were getting paid. You could buy a lot of testimony for freedom, or the threat of making somebody sit through this ordeal for ten weeks wondering what twelve people are going to think. The agony. You can buy a lot.

Mr. Kunz suggested that somebody would say that -- mentioned something about the Lindbergh case. I suggest to you that Mr. Turner, at the request of Mr. Kunz, would say that Mr. Neder killed Kennedy, he saw it with his own eyes, both of them, okay, for the kind of treatment that he's going to get. Think about it. That's awesome power, isn't it. And that's what's happening here. Awesome. And you're here to prevent that from happening. You are the twelve people who check the system.

So you have to believe one of two things, or believe both of them. The counts are bogus, the Government brought them to coerce people; or, he got himself a great deal, which, if you follow the Judge's instructions you've got to [Tr. 232] consider. Okay?

Now, it wouldn't be so bad if he did get on that stand -- and don't be deceived by that choir boy look, because you know what he is, I just told you -- and he did say, well, I saw, I saw the light, I'm rehabilitated now, I'm going to sit up here, Mr. Kunz, and testify truthfully against Mr. Neder; and he did. But he didn't, he got up on the stand and he lied and he lied again. However, you can't fool everybody all the time.

He probably, he probably would if he was better prepared. I asked him, "Did you review a whole bunch of things for the Government? Did you go through ..." "Yeah, I looked at this, at this stuff." I looked, I looked, I looked, I looked. Boy. And don't you remember Mr. Kunz asked him, "Well, you know, were you a retained lawyer?" "No, I wasn't a retained lawyer, strictly job specific stuff I did for Mr. Neder."

I asked a whole bunch of other questions. "Retained lawyer? Did you ever give any tax advice?" "Never did." This and that and the other thing. Okay?

You know something, he lied, and he wasn't good at it because in his rehearsal what he failed to do, ladies and gentlemen, is look at the bills. Okay, he might've looked at all this other stuff Mr. Kunz asked him to look at, but these bills are what we put into evidence. He didn't review [Tr. 233] these bills.

Remember I said to him, "Sir, if you say you're not a retained lawyer, well, what if I tell you there's a four thousand dollar retainer?" "No, no such thing."

"How about a twenty-nine thousand dollar?" "Never had a twenty-nine thousand dollar retainer."

Well, ladies and gentlemen, English just might be my second language, but I can read twenty-nine thousand dollar retainer on a bill, and so could everybody else here.

"Did you ever give tax advice?" "No."

"How about where you billed him for four and a half hours telling him how to do a tax free exchange, that's not tax advice?" And then plain stupid saying that there are no tax ramifications in doing big real estate deals. Now that really stretches the imagination. Who's going to go to a lawyer to do a big commercial real estate deal who doesn't know anything about taxes, and pay him top dollar for the time, $125 an hour? No one.

These bills contradict every single thing he said on that stand. He said, "I never got involved with Mr. Neder's day-to-day activities. He only came to me for job specific kinds of things, foreclosing."

Well, ladies and gentlemen, if you do nothing else, because Mr. Turner is a very, very big witness for the Government here, you've got to believe him. You've got to [Tr. 234] believe him to convict Mr. Neder of anything,

because if Mr. Neder took his advice in good faith, Mr. Neder's not guilty of anything, anything in this indictment. If you pick up not one other shred of evidence, you've got to deal with Tom Turner. Pick up his bills and see what he billed Mr. Neder at. Look at the retainer fees. Okay?

He also said, "I didn't get involved with Mr. Neder until Southern Grove, which I believe was in 1985, the first time I ever got involved." I'm sorry, ladies and gentlemen, he was involved with Mr. Neder in 1983, with Rose Creek. asked him about that.

He also said, "I knew nothing about Mr. Neder's nominee agencies." He formed them. The corporate books were in his office. He said, "Well, they were only there for a short period of time." No. Donelan, all these people, they formed these nominee corporations, the ones that Horace Marsh and Mary Kerr and those people were on, they formed them. Now, common sense. And they charged Mr. Neder for forming those nominee corporations. Now, how could he tell you with a straight face that he thought Mr. Neder had no affiliation.

How about this thing about giving Mr. Neder the net proceeds? Okay? These checks for $350,000, $900,000, to go give to somebody else. Ladies and gentlemen, that just doesn't happen. He's the closing attorney. He's going to [Tr. 235] give somebody else's money to Mr. Neder when Mr. Neder has no relationship with them? You got to be pretty stupid, but I suggest to you he's not stupid, he's sly as a fox.

But that's what Mr. Kunz needed him to say, because he knows that the law says if Mr. Neder in good faith, in other words on reliance of his attorney, did all these things he did, he's not guilty. So Mr. Kunz wants to have it both ways. You understand that? But they didn't do their homework. This

impeaches every single thing he said. They didn't do their homework. They got caught. Okay? Understand that?

You don't go to jail for picking a lousy lawyer, or even a corrupt lawyer. You go to jail for having the intent to commit a crime. That's why Mr. Kunz wanted Mr. Turner to say that he didn't have any day-to-day relations. When we were talking about the nominees, it was a big surprise to him. How could it be when he formed them? How could he be not involved in the day-to-day conferences? How could he not be a retained lawyer when any of Mr. Neder's employees could pick up the phone and talk to Tom Turner and Tom Turner bills him for it?

Common sense. What employer, unless you have retained counsel, is going to allow employees to do that? What lawyer would do that without permission from the client unless he has a retainer? You can't have it both ways, but [Tr. 236] that's what Mr. Kunz wants you to believe. He wants you to believe that Mr. Neder fooled Tom Turner. Who orchestrated the whole arrangement? Where he got his information from.

And also the conversation, "Did you ever meet Mr. Brooks?" "Might've met him in overlapping meetings but never had any ..." I said, "Wait, do you know him personally?" He said, "No, I don't. Had some conversations." What do you think they were talking about if they weren't talking about Mr. Neder's taxes and Mr. Neder's business? Of course that's who they were talking about.

He wrote letters to Horace Marsh -- okay? -- regarding a refund from the State on First Frontier and he billed Mr. Neder for it. He had status conferences with Mr. Neder, went to meetings with Mr. Neder and his staff. He gave general advice, not job specific advice.

And those forms, these affidavits, he drafted them. He admitted to changing the punctuation because his handwriting was on it, but he drafted both of them.

Mr. Kunz doesn't want him to say that because if he drafted them and Mr. Neder relied on his advice, these are not untruthful statements, Mr. Neder walks, because he in good faith relied on the advice of his counsel. Do you understand that? That's why his testimony is so awkward, because he wants it both ways and he can't have it both ways. You believe him or you don't believe him.

[Tr. 237] I say don't believe him because for two reasons. Number one, when the Judge tells you to view his testimony with great caution, and this is the caveat, read these bills, you'll see what the relationship was. Defendant's Exhibit No. 20. Read them, you'll know that this man lied through his teeth, that choir boy. He tried to please Mr. Kunz but he got caught, and so did Mr. Kunz, inadvertently.

I'll tell you something else interesting. Mr. Turner supposedly said that these were all arms length transactions. Okay? He was the closing attorney and he thought that Mr. Neder had nothing to do with the nominee corporation.

Now, what was happening? We have simultaneous closings here. Okay? And there were loan proceeds, and those loan proceeds would go to the seller. Correct? That's where they're supposed to go, then the excess would go to Mr. Neder to give to the seller, supposedly, because he didn't know that there were agents. Okay?

Well, it's too bad, Mr. Turner, because the evidence shows differently. The jury can't buy that. You need to look only at -- there's one, two, three -- eight different closings: Southern Grove, River Creek, Beach Harbor, San Sebastian, The View, Stokes Landing, Belle Rive and Reddie Point.

Those are eight -- oh, by the way, Reddie Point, we asked him where the million dollar down payment was and he [Tr. 238] goes, "Gee, I don't know, I must be missing a document somewhere." Ain't no missing document. Okay?

If you look at those loans, if you look at Government's Exhibit No. 48, which is the ledger, for the closing at Southern Grove, you'll see that certain expenses -- okay? -- like attorney's fees, title insurance, two title insurance, Clerk of the Circuit Court, three different, over ten thousand dollars -- okay? -- of costs. Now listen to this: Of the borrower, because that's what it says in the contract, these will be costs to the borrower -- they're listed here in Government's Exhibit 51 -- okay? -- were taken out of the proceeds of the loan. Think about what this means.

He took the borrower's costs out of the seller's net check. He did it eight times. Eight times, ladies and gentlemen. If these were arms length transactions, two separate borrowers, like he'd want you to believe you thought they were, why would he charge the seller all the costs of the borrower and net it out. He says he didn't know what netting is. Of course he does. You need to look at those exhibits. Look at the ledger card, which is Government's Exhibit -- this is just for Southern Grove, Government Exhibit 48; the closing statement, Government Exhibit 51; the contract, 41; and 49, which is the excess proceeds, and you'll see each and every time. And River [Tr. 239] Creek, Government's Exhibit 98, which is his general ledger out of his law office, where he has all the costs that according to the contract are supposed to be charged to the buyer -- okay? -- taken out of the seller's proceeds.

He didn't do his homework, he did it eight times. So he can't come in here and tell you, tell you the truth, that these are, he thought these were arms length transactions, he didn't

know these were agencies, because then he would have to explain why did he charge the seller. The seller is supposed to get the proceeds, why did he charge the seller all the borrower's costs if that were the case? Because it isn't the case, they're one and the same, and he knew it.

What's significant about that, ladies and gentlemen, he lied to you again, and he got caught red-handed just like with his bills -- just like with his bills. I don't think there was any accounting background, it doesn't take much.

Look at those exhibits, ladies and gentlemen, they speak for themselves.

Anyone, any closing attorney who charges the seller the buyer's costs, unless they're brothers and sisters and they're just friends -- I mean we're talking about costs, twenty, thirty, forty, fifty thousand dollars -- he gives the net proceeds back to the buyer again, has got to be a lunatic for you to believe that he didn't know that they were, that they were related parties.

[Tr. 240] But you know something? That's how the Government wants him to testify, that's how they want to stretch, stretch the truth. Because, like I said, if Mr. Turner got up there and said, "Yeah, that's how I did it, that's how I advised Ellis Neder to do it," Ellis Neder is not guilty because he acted in good faith on a representation of his lawyer. That's why the Government needs you to believe him half the time and not the other half of the time, because they need him to build the case against Ellis Neder. But unfortunately, it ain't going to work, you people happen to be too smart for that.

You can take everything Tom Turner said and toss it, because he's a liar, an admitted one, and he's an admitted thief. And he came in here, after standing in front of here and taking that oath, and said, I will tell the truth, and he told a bunch of more lies.

Not because I say they're lies, the evidence tells you he's lying. The bills are here. These bills were created back in 1985 and 1984 and 1983. Okay? He was involved -you look at some of those -- as far back as Rose Creek, Cedar Creek. He wasn't the closing attorney, I mean Bill Joos was the closing attorney. Okay? And he said, "I don't know anything about netting, he never heard anything about netting. He gave one check at the end after he taxed, quote, the unrelated party, be it Horace Marsh, Mary Millis, [Tr. 241] whatever -- okay? -- Mr. Neder's costs, which don't make sense. He netted it out.

He says that Mr. Neder never brought any checks to the table. Mr. Neder has brought checks to the table, he testified to that. The fact that he never used any of his checks because Mr. Turner decided to net it out is something else, but he was prepared to do it.

When somebody goes to a lawyer, even if you're a lawyer yourself -- okay? -- you go with the expectation that you're going to get the proper advice, and if you want to do something that isn't right, that lawyer is going to say no, you can't do it. This lawyer didn't, Mr. Turner; he said, yeah, you can do it, and this is how you do it. And he told him how to do it.

Did he ever tell Mr. Neder that this was illegal? No. He told Mr. Neder this was how they play it. I'm a real estate lawyer, I deal with banks all the time, this is how it's done, and he gave him the formula. He told him, that's how you do it.

Mr. Neder was at his tax, at his accountant's office, and he said specifically -- remember Mr. Brooks? -- he said, "Give me an extra copy of the 721 so I can bring it back and make sure Tom Turner is doing these things properly." Okay? And he brought it back to Tom Turner, and Tom Turner didn't know anything about it. That's probably why Mr. Neder is in

[Tr. 242] trouble today, but that's not Mr. Neder's fault. He went to a lousy, as well as a stupid and corrupt lawyer, because that's what he is.

And why would he do that? Well, I suggest to you, ladies and gentlemen, $200,000 worth of fees in a couple of years is not peanuts. Now, I'm not saying they were exorbitant fees, but it was a good piece of business for giving bad advice.

Like I said, don't forget, he committed a crime that had absolutely nothing, nothing to do with Ellis Neder. If Ellis Neder was in cahoots with Mr. Turner to commit crimes, he wouldn't be paying him fees. You know how that works, they'd be splitting -- quote -- profits, ripping off banks. But it wasn't Mr. Neder's intent to do that.

That's what your common sense tells you, and that's what you're going to take to that jury room, common sense. The Court's going to tell you to do that.

Ladies and gentlemen, there are some other loose ends that the Government brought up that need to be answered before I finish.

They said that Mr. Neder was trying to conceal Mr. Marsh, Ms. Millis, his sister, from even Mr. Turner. If that were true, and you heard the testimony, why in the world would he bring Mary Millis to the closing table, Horace Marsh to the closing table, where the bankers, their [Tr. 243] lawyers and everybody else could and should be, why would he do that?

Why would he tell Mr. Turner that Mary Kerr is my sister in the underlying transaction if he was trying to conceal something? That doesn't make sense.

Now this other thing about making, the Government is making a big deal about Mary Millis using her maiden name, Rosier, and there's a good reason for it. There was a

discussion -- okay? -- about interoffice jealousy if somebody knew that she was acting as one of his corporations, pet employee, so to speak, that kind of thing. Just as the prosecutor even told you that one of his, one of his employees got really upset that he was using Horace Marsh instead of him. Now, can you imagine what the rest of the office staff would do? So that was the reason Rosier, she used her maiden name. And that was at Caribank -- I mean -- yeah, it was Ms. Doerr's bank, it was a Caribank loan. Ms. Doerr said she knew her. Ms. Doerr could've been at the closing. Was he trying to hide anything at the closing?

And at the closing don't you recall Mary Millis said to Mr. Turner, "Is this legal?" And he goes, "Unh-hunh." What she's doing? How can Turner get on the stand and say that he didn't know anything when the nominee turns around and says, "Mr. Turner, is this thing legal?" and he goes, [Tr. 244] "Yeah." Their witness testified to that. That's absurd.

And you also heard from everybody that worked for Mr. Neder that Mr. Neder never did a thing without running it past Tom Turner. The Government witnesses told you that. That's important.

Why did he run it past Tom Turner? Because he didn't want to be here in 1991 and 1992, that's why he went to Turner. What did Turner do? Nothing.

Mr. Kunz also said that Horace Marsh never signed -- okay -- for the underlying purchase. Well, if you look at Government's Exhibits 35, 36 and 41, you'll see his signature on those contracts.

Now, Mr. Kunz also said, he told you in his opening and he told you again today in his closing, that this was some kind of pyramid scheme. This is not a pyramid scheme. Dr. Fish told you what a pyramid scheme is. Okay? It has

absolutely nothing to do with a pyramid scheme. Nobody takes the money, nobody took the money and ran here. That's what a pyramid scheme is. Once you think you've got enough on top of the pyramid you grab it and you're out of there. That didn't happen here.

He also said, he commented on Mr. Hovde's testimony and he said, "Well, isn't that kind of like hitting the lottery when you can get a purchase price the same as an appraisal?" Mr. Hovde first said, "Yes, it is." But then on cross [Tr. 245] examination we asked Mr. Hovde, "Now, wait a minute, Mr. Hovde, what if the appraisal was already done and somebody calls up..." -- I think the Judge even asked this question -- "...and says, what's the price going to be, he puts it on the contract." That's not hitting the lottery. Of course not. He's trying to make it sound like it's impossible. It's the simplest thing in the world. There was a two -- we heard testimony -- a two or three week lapse, sometimes, between the time the price is arrived at and the actual appraisal goes out. That's what he's going to try to convict Mr. Neder for abetting appraisers on? That's the kind of evidence? Common sense tells you how that happened. More smoke.

He also said that Mr. Neder tried to conceal the first closing. From who? Mr. Turner? There was simultaneous closings, he did them both. That is also not true. You heard it, simultaneous closings, from everybody. The bankers all knew it, everybody knew it was going to be simultaneous closings.

Now Mr. Kunz takes great pride in the fact that he drags the ex-wife down here to testify that there was no land trust in the divorce. But you know something? That was a futile attempt because Mr. Neder, unfortunately for the Government, has been divorced more than once, and we introduced the divorce decree which mentions a land trust, [Tr.

246] the one that he anticipated to do, the Belle Ring deal. That gets nowhere. Look at the divorce decree that we introduced and you'll see that there is, in fact, a land trust, which did happen to deal with property then, but a land trust you can put anything else you want in there as well, you just amend it. And that's what he was referring to.

See, he wanted to say there was absolutely no land trust in any divorce decree. Baloney. The man's been divorced more than once. They should've done their home work, that wouldn't have backfired on them, but they didn't do their homework, just like Mr. Turner didn't do his homework.

Now, also Mr. Kunz said Mr. Neder never, never wrote a check -- okay? -- at the closing, never made any deposits. Well, ladies and gentlemen, I don't know if that's true because in Government's Exhibits 20 and 29 there are closings that were done by a Mr. Joos -- remember him? -- the other attorney, not Mr. Neder, and they all reflect down payments. It wasn't don't by Mr. Turner, this is the one that had to do with Cedar Creek, and they all reflect down payments.

Now, was Mr. Joos also in this conspiracy too? Well, I don't see him sitting at the table, I don't see him confessing to any crimes. Obviously that's not true.

[Tr. 247] Also, if you look at Mr. Turner's ledger card again, you'll see that Mr. Neder at the closing of Southern Grove, wrote a check for $17,793, received from Ellis Neder; so that's not true, they didn't do their homework to make those kinds of statements.

Now, you also heard testimony -- and this is really, really important -- that all the banks, every single lender that came in here, never gave a loan to value, only to cost. You member Mr. Kunz saying that? Without exception, whichever is less. Cost -- okay? -- purchase price as opposed to the value.

Well, that's absolutely not true. Government's Exhibit No. 9 is a commitment -- okay? -- is a commitment for Cedar Creek by Duval Federal. Okay? It says, "Recommendation, approval limited to seventy percent loan to value, for $273,000, subject to a full narrative appraisal." In other words, ladies and gentlemen, they were making this loan, not to cost -- okay? -- so they can't complain about, quote, underlying transaction which have low predicate to value. In this case it was $273,000, which comes out to exactly seventy percent of what the appraised price was for that piece of property.

So that's not true. Those loans, those collateral loans were given, and here the Government's evidence will show you that.

[Tr. 248] Matter of fact, Mr. Neder back on September 5th, '84, when he closed that loan with Mr. Beaty -- okay? -- sent him a letter that says,

"Enclosed find the contract to purchase the additional acreage we spoke about. Please arrange a seventy percent collateral loan as before."

Southern Grove, Financial Federal. $525,000 is the appraised price of the value of the property. Loan term, loan to value, 67% of loan to value. What was the appraisal on Southern Grove that was done by Johnson? Lo and behold, it was 67% of the loan. Now, that's of course, the appraisal they're not complaining about, which is double what the original purchase price was. See, they do admit it might happen, but that was a loan to value. So it does happen, and it was happening. It was happening in that climate and in that atmosphere.

That smoking gun that he talked about, that reservation list that said, "Fake" on it. Well, Ms. King told you those were her words, not Mr. Neder's. There was nothing fake.

How about this deed supposedly Mr. Romano didn't have any authority to give, gave to Mr. Neder? Well, ladies and gentlemen, you do not have conclusive proof that Mr. Romano did not have the authority to give that right of way, that access, because they could've brought Mr. Romano in here or some other evidence other than some guy saying, hey, I [Tr. 249] concluded that he didn't have it. No, this is too serious. Bring me Mr. Romano, bring me somebody else and say that Mr. Romano didn't have and show me he didn't have. Mr. Romano is part of that group that sold that piece of property. You can't go on somebody else's word. Bring me proof.

Did Donelan bring you any proof, show you a document that this man didn't have any, any right to give that? Absolutely not. Absolutely not. That's what Mr. Kunz wants you to think. That's not proof beyond a reasonable doubt. So that's not a false statement. They've got to bring you proof, not that I concluded.

From what? Bring me some documentation to say that this man didn't have a right to give that deed then maybe you can prove that count. It doesn't exist. They didn't give you the kind of proof that's necessary to convict somebody.

Now, Yvonne Baker, you remember her, she was the loan officer that had to do with Cedar Creek, she admitted on cross examination that they, in fact, did relax the rules regarding related parties, to allow the brokers to buy property at Cedar Creek. That was her testimony. And now they're proclaiming that Mr. Neder had his employees buy property and speculate on property. Well, there's nothing in those loan commitments that prohibits that from happening.

[Tr. 250] Once again, he ran that by Tom Turner. He said, can I do that? He says, yes, you can. Just like he ran the equity financing. Tom Turner said he drafted that document, so he must have approved of it.

How do you know that Mr. Neder did not have the specific intent of committing any crimes, and that he thought everything was legal? You know how you know? By his behavior. He told -- and they brought the people on here -- he told his secretary what he was doing, he told Mary Millis what he was doing. He told Margo Doerr and her boss what he was doing.

Is this the specific mental intent of somebody who's trying to conceal and commit crimes? Of course not, unless that person's an idiot.

You heard Mr. Neder testify. I think you can take -- you've got knowledge of the fact that the man's not an idiot. He thought what he was doing was perfectly okay and it was acceptable.

That whole deal with the Bank of the South, where he had spent ninety-some-odd thousand dollars getting a commitment for a construction loan that he didn't take. Remember I asked that lady, I said, "What did you do for that $47,000?" "Oh, we did paper work."

I said, "Well, that's a lot of money, he never took that loan, ma'am." And it's not because Tom Turner said [Tr. 251] that he wouldn't sign something, because Mr. Neder could have gone to another attorney. It was because Mr. Neder knew that his financial condition had changed, so instead of going to another attorney or taking that money under false pretenses, he let it go.

If he was out to deceive he would've taken that money. He needed it and he needed it badly, but he didn't. Now they want to charge him for attempting to do something which he could have done, but he elected not to do because he didn't want to commit a crime.

Now once again, Mr. Kunz wants Tom Turner to say, I was the reason Mr. Neder didn't go forward with that loan from the Bank of the South. Once again, Mr. Kunz wants you to believe when he puts on the, the automatic pilot or the remote control, what Tom Turner should believe. Now what he ought to do is put up a sign saying, believe this, don't believe this, believe this, don't believe this. But you don't have to do that, you just toss it all away because if they'll lie to you once they'll lie to you five times, they'll lie to you ten times, twenty times, he just can't be believed. Don't be fooled by that angelic little face. The man is an admitted thief.

Ladies and gentlemen, the Court is going to read you the law before you go back, and he's going to tell you what the defenses are to all the crimes that are charged in this [Tr. 252] indictment. He will tell you that this Government has to prove each and every single element, not just one part of it, the second part of a three part kind of thing, each and every single element beyond and to the exclusion of all reasonable doubt in order for you to find Mr. Neder guilty of any one or all counts, individually, that is.

You, given this evidence, cannot find Mr. Neder guilty of the charges. What the Government realizes, and they admitted it by throwing out forty counts on somebody and thirty counts on somebody else, is that these are bogus charges. Okay? They admit that, it's an admission on their part.

What did Mike Loyd get thrown out, another ten charges; and then Moore, gosh knows how many charges. Okay? So what have they elected to do? They elected to load that indictment up with as many charges as they could possibly dream up, that they could allege, given the facts, and hope, using that cyclone approach, that you'll come back with something. That's the approach.

Throw it all up against the wall, something is going to have to stick.

And you know what they're betting on? They're betting on something that's so instinctive to Americans, and that's our willingness to compromise. Americans are the greatest compromisers. And you know, that's okay in business and in [Tr. 253] trading, and if this were a civil case -- you know something, that's what needs to be done, someone is so negligent, the other guy's comparatively negligent, compromise.

Ladies and gentlemen, there is no compromise in a criminal case. You have not served the duty and the oath, you have not abided by the oath that you take -- okay -- if you just compromise for the sake of compromise when it comes to freedom. There is no compromise. The Government must prove beyond and to the conclusion of all reasonable doubt every single one of those eighty-one counts, and they can't meet that. They can't draw all those counts and load up that indictment, and hope that something sticks to the wall, and you people get into a deadlock and say, oh, we're going to compromise because that's the American way, that's the way we're used to doing things.

Like I said, that's okay in business, it might be okay in a civil case, but not in a criminal case. Our constitution does not allow that.

But that power, that awesome power allows them to do that, and if you fall into it, you've been used. And I suggest to you that's exactly what's happening. Because, let's face it, you sat here for ten weeks, almost ten weeks, and you saw all this come in here, you say, gee, that's a lot of smoke, must be some fire, it's got to be something, [Tr. 254] how am I to walk out there after listening to ten weeks of testimony, hundred some odd witnesses six hundred, seven hundred exhibits, without convicting somebody.

Because, ladies and gentlemen, if you walk out of here and you don't convict anybody, you, given the facts of this case, walk out of here with your head held high, because you weren't tricked and you weren't fooled and manipulated by the government. Common sense again.

If these eighty-one charges against Mr. Neder had any, any substance, why would they be so willing to throw away the charges on everybody else if they have substance? Why shouldn't they pay for their crimes?

I suggest that's exactly what's happening to you. You're going to see that they're all the same charges over and over again, played differently, and that's exactly what they are. And you know something, like I said, criminal law is really simple. This is not a complicated civil case with contracts and real estate issues and stuff like that, not at all. It's a criminal case. Did Mr. Neder, when he had -- when he sent in those reservation agreements, created, helped create EAT, put in those down payments to stimulate, did he commit a crime? Was that his mens rea, was that his intent to do that or not?

Was there a crime committed here? Not did something bad happen, did people lose money, because people lose money [Tr. 255] in the United States all the time. In this case, it's the fault of the United States. That's not the crime.

And people say, you know, gee, twenty million dollars down the tube, what a crime. That's a figure of speech. It's not a crime. To be a crime you have to have criminal intent. I suggest to you the Government has proven no criminal intent on the part of Mr. Neder.

To act with the intent to defraud means to act knowingly, with the specific intent to deceive someone, ordinarily for the purpose of causing some financial loss to

another or bringing about some financial gain to himself. That didn't happen.

If Mr. Neder wanted to bring financial gain to himself he could have done it from day one, day two, but he didn't. He saw it all the way through. Foolish business man, yeah; beating a dead horse, yeah; criminal, no.

Now, good faith is a complete defense to all those charges that require the intent to defraud in the indictment, since good faith on the part of the defendant is inconsistent with the intent to defraud; or willfulness, the mens -- like I said, the mens rea, specific intent, which is an essential part of those charges. The burden of proof is not on the defendant to prove his good faith, since he has no burden to prove anything. The burden is on the Government to establish beyond and to the exclusion of all [Tr. 256] reasonable doubt that he acted, the defendant, that is, with specific intent to defraud where it is charged.

Now, there is a caveat to this and it says,

"One who expresses an opinion honestly held by him or believed honestly and entertained by him, is not chargeable with fraudulent intent, even though his opinion is erroneous or his belief is mistaken, and similarly if evidence establishes only that a person made a mistake in judgment, or in error, or in management, or was careless, that does not establish fraudulent intent."

Now, there is a cautionary thing about it. It says,

"On the other hand, an honest belief on the part of the defendant that a particular business venture is sound and would ultimately succeed, would not in and of itself constitute good faith as used in these instructions if, in carrying out the venture, the defendant knowingly made false and fraudulent

representations to others with the specific intent to deceive them."

Once again, it still applies. It may sound like, hey, it doesn't apply if he made false statements, but he had to make those false statements, once again, with the specific intent to defraud. Okay? If he believed that he was getting the right advice of counsel, then he didn't have that specific intent, and what he was doing was proper, then he is entitled to that good faith.

[Tr. 257] I suggest to you that he's entitled. He's entitled because he told you what he depended on. He told you what his lawyer told him. His lawyer got up here and lied to you. He denied it.

Mr. Brooks told you the conversations he had with Ellis Neder, what his concerns were. On that tax issue, Mr. Neder told you, before I signed my tax return I went to see Hans Tanzler, who is a tax attorney, one of the top tax attorneys, and he said this is okay. He said he wrote a memo to the IRS supporting what Mr. Neder did, and then he signed his tax returns after the advice. You don't go to jail for getting bad advice.

Ladies and gentlemen, beyond a reasonable doubt, like I said, is the highest, highest burden known in the civilized world. We've enjoyed it in this country for many, many years because there are people like yourselves, who are willing to come in here and hold the government to that burden. You're all from Wisconsin, say, show me, prove it to me.

You walk in here and every American is presumed that right of innocence, and shall never be removed from them until, only until they can bring enough evidence to strip that person of that. In this case they have not done that.

What's reasonable doubt? It's a doubt that you have a reason for. True. It's not any possible doubt, all it has [Tr. 258] to be is a doubt that you can base a reason on. If you believe that Mr. Neder relied on the advice of Mr. Turner, and you have reasonable doubt to believe Mr. Turner's testimony, Mr. Neder is not guilty. It's a doubt that doesn't vacillate.

If you're thinking here, gee, you know something, Neder could be guilty, that's not enough. If you're thinking here, you know, he's probably guilty, that's still not enough. You've got to be convinced to that moral certainty, beyond and to the exclusion of all reasonable doubt that he is guilty, and it's got to feel right not just today or tomorrow, it's got to feel right any time you look back and you think about it.

The Judge will tell you, the most important affairs of your life is the kind of convincing evidence that you rely on to convict somebody. It's not here. You've found out from an historian, Dr. Fish; double talk we got from the bankers who supposedly say, we didn't know, we have asked, we assumed. They may have assumed, you don't assume anything. If you assume anything, you assume guilt you breach that oath you took.

So, unless you can walk out of here convinced forever that Mr. Neder committed all these crimes, every single one of them, then you can't convict him. Not that you can't, the Judge will tell you, you must acquit him, because that's the presumption. You didn't come in here to work for the Government, you came in here to check the Government and make sure that no citizen is abused by the arrogance of power.

Thank you.

THE COURT: Ladies and gentlemen, we're going to recess for the day.

As I told you at the outset, before the arguments of the attorneys, if their recital of the evidence is different than your recollection, it will be your recollection that will control; and I will tell you right now, you will hear from me tomorrow the instructions of the Court which will differ from the arguments the attorneys have made to you.

It will be my instructions on the law that will control in this case, and not what the attorneys tell you the law is; and your sworn duty will be to follow the law that I give to you, as I told you yesterday, whether you agree with it or not.

Do not discuss the case with anyone, even amongst yourselves. Keep an open mind, don't form any opinions or conclusions.

If anything happens to be in the news media, totally disregard it, don't read it, don't listen to it; and if you'll be back at 9:00 o'clock tomorrow morning we'll continue with the closing arguments.

[Tr. 260] Thank you.

(Jury excused 5:30 p.m.)

THE COURT: All right, would you please go through the exhibits and make sure that the exhibits are back so that you can argue with them tomorrow; and if any of you are going to stand there and read from the instructions that I gave you, would you please read them as I will read them to the jury and not paraphrase them as you think they should be, or tell the jury what you think the law is when it's exactly contrary to what I'm going to give them in the instructions tomorrow, it would help.

Thank you, very much.

We'll be in recess until 9:00 o'clock.

(Recess 5:32 p.m.)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

vs.

ELLIS E. NEDER, JR.
ROY F. SMITH, JR.
ROY F. SMITH, JR.
& ASSOCIATES, INC.
PETER A. FOGG

Case No. 91-175-CR-J-16

COURT'S INSTRUCTIONS
TO THE JURY

Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished you will go to the jury room and begin your discussions -- what we call your deliberations.

I saw that some of you, from time-to-time, have been taking notes during the proceedings. I will give you a written copy of these instructions that I am now reading to you so you need not take notes at this time.

It will be your duty to decide whether the Government has proved beyond a reasonable doubt the specific elements necessary to find the Defendants guilty of the crimes charged in the Indictment.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial;

and you must not be influenced in any way by either sympathy or prejudice for or against the Defendant or the Government.

You must also follow the law as I explain it to you whether you agree with that law or not; and you must follow all of my instructions as a whole. You may not single out, or disregard, any of the Court's instructions on the law.

The Indictment or formal charge against a Defendant is not evidence of guilt. Indeed, the Defendant is presumed by the law to be innocent. The law does not require a Defendant to prove his or her innocence or produce any evidence at all. The Government has the burden of proving a Defendant guilty beyond a reasonable doubt, and if it fails to do so you must find the Defendant not guilty.

Thus, while the Government's burden of proof is a strict or heavy burden, it is not necessary that the Defendant's guilt be proved beyond all possible doubt. It is only required that the Government's proof exclude any "reasonable doubt" concerning the Defendant's guilt.

A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

As stated earlier you must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses and the exhibits admitted in the record. Remember that anything the lawyers say is not evidence in the case. It is your own recollection and

interpretation of the evidence that controls. What the lawyers say is not binding upon you. Also, you should not assume from anything I may have said that I have any opinion concerning any of the issues in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision concerning the facts.

If you have taken notes, your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you did not take notes, you should rely upon your own independent recollection of the proceedings and you should not be unduly influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the memory or impression of each juror as to what the testimony may have been.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating that the Defendant is either guilty or not guilty. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Now, in saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not

controlling. You may decide that the testimony of a smaller number of witnesses concerning any fact in dispute is more believable than the testimony of a larger number of witnesses to the contrary.

You will recall during the trial certain witnesses were allowed to testify and give their opinion concerning a summary of previously admitted evidence relating to the flow of certain monies. As I told you then and I shall repeat once more, it is the documents underlying that testimony that you are to consider as evidence in this case. That testimony was offered only as a means of assisting you in comprehending the underlying evidence. The summaries themselves were not admitted into evidence and should not be considered by you as evidence. If any factual dispute arises concerning the summary testimony, you should consider only the underlying source documents in resolving that dispute. And, as I have previously instructed you, it is your duty to decide what weight to ascribe to any evidence; that is, whether you will accept or reject any or all of the evidence is a decision for you to make in accordance with these instructions.

In deciding whether you believe or do not believe any witness I suggest that you ask yourself a few questions: Did the person impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did the witness appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely

concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony he or she gave before you during the trial.

The fact that a witness has been convicted of a felony offense, or a crime involving dishonesty or false statement, is another factor you may consider in deciding whether you believe a witness' testimony.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood; and that may depend on whether it has to do with an important fact or with only an unimportant detail.

A Defendant has a right not to testify. If a Defendant does testify, however, you should decide in the same way as that of any other witness whether you believe his testimony.

During this trial, a stipulation of anticipated testimony was presented to you. You are to consider and weigh that testimony as though that witness had testified here in Court with regards to that matter.

The testimony of some witnesses must be considered with more caution than the testimony of other witnesses. In this case the Government called as witnesses persons named as a co-defendant, or accomplices, in the Indictment, with whom the Government has entered into a plea agreement providing for the dismissal of some charges and/or a lesser sentence than the witness would otherwise be exposed to for the offense or offenses to which he or she plead guilty, or has been granted

immunity. Such plea bargaining, as it is called, has been approved as lawful and proper, and is expressly provided for in the rules of this Court. However, a witness who hopes to gain more favorable treatment in his or her own case may have a reason to make a false statement because he or she wants to strike a good bargain with the Government. So, while a witness of that kind may be entirely truthful when testifying, you should consider that testimony with more caution than the testimony of other witnesses.

And, of course, the fact that a witness has plead guilty to the crime charged in the Indictment is not evidence, in and of itself, of the guilt of any other person.

When knowledge of a technical subject matter might be helpful to the jury, a person having special training or experience in that technical field -- one who is called an expert witness -- is permitted to state his or her opinion concerning those technical matters.

Merely because an expert witness has expressed an opinion, however, does not mean that you must accept that opinion. The same as with any other witness, it is up to you to decide whether to rely upon it.

In this case, as you know, the Indictment charges eighty-one separate offenses called "counts." I will not read it to you at length because you will be given a copy of the Indictment for study during your deliberations.

A separate crime or offense is charged in each count of the Indictment. Each offense, and the evidence pertaining to it, should be considered separately. Also, the case of each Defendant should be considered separately and individually. The fact that you may find one or more of the Defendants guilty or not guilty of any of the offenses charged should not

affect your verdict as to any other offense or any other Defendant.

I caution you, members of the Jury, that you are here to determine from the evidence in this case whether the Defendant is guilty or not guilty. The Defendant is on trial only for those specific offenses alleged in the Indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the Defendant is convicted the matter of punishment is for the Judge to determine.

In summary, Count One charges that the Defendants knowingly and willfully conspired together in violation of Title 18, United States Code, Section 371, to execute and attempt to execute a scheme and artifice to defraud and to obtain the moneys owned by and under the custody and control of federally insured financial institutions, by means of false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344; and to knowingly make any false statement or report, or willfully overvalue any land, property or security for the purpose of influencing in any way the action of the institutions the accounts of which are insured by the FSLIC upon applications and loans, or any change or extension of any of the same, in violation of Title 18, United States Code, Section 1014; and to knowingly and willfully transmit by means of wire communications in interstate commerce writings, signals, pictures, and sounds for the purpose of executing a scheme and artifice to defraud, and to obtain moneys by false pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1343.

Count Ninety charges that the Defendants unlawfully and willfully entered into a separate conspiracy in violation of Title 18, United States Code, Section 1962(d), to conduct and

participate, directly or indirectly, in the conduct of the affairs of an enterprise through a pattern of racketeering activity consisting of mail fraud and wire fraud, in violation of Title 18, United States Code, Section 1962(c).

The remaining Counts charge the commission of the substantive offenses; namely, that the Defendants committed bank fraud in Counts Two through Twelve, and Seventy-seven, in violation of Title 18, United States Code, Section 1344; land over-evaluations in Counts Thirteen through Twenty, and false statements to financial institutions in Counts Thirty-six through Seventy-two, all in violation of Title 18, United States Code, Section 1014; mail fraud in Counts Twenty-one through Twenty-three, Twenty-six through Twenty-eight, Thirtv, Thirty-four, and Thirty-five, all in violation of Title 18, United States Code, Section 1341; wire fraud in Counts Thirty-one through Thirty-three, and Seventy-eight through Eighty-four, all in violation of Title 18, United States Code, Section 1343; false statements on income tax returns in Counts Eighty-six and Eighty-seven, all in violation of Title 26, United States Code, Section 7206(l); and racketeering in Count Eighty-nine, in violation of Title 18, United States Code, Section 1962(c).

You will note that as to Counts One and Ninety, the Defendants are not charged in those counts with violating the substantive counts I have named; rather they are charged with having conspired to do so in violation of Title 18, United States Code, Sections 371 and 1962(d).

I will explain the law governing those substantive offenses in a moment.

Title 18, United States Code, Section 371, makes it a separate federal crime or offense for anyone to conspire or agree with someone else to do something which, if actually carried out, would amount to another Federal crime or offense. So, under this law, a "conspiracy" is an agreement or a kind of

"partnership" in criminal purposes in which each member becomes the agent or partner of every other member.

In order to establish a conspiracy offense in Count One, it is not necessary for the Government to prove that all of the people named in the indictment were members of the scheme; or that those who were members had entered into any formal type of agreement; or that the members had planned together all of the details of the scheme or the "overt acts" that the indictment charges would be carried out in an effort to commit the intended crime.

Also, because the essence of a conspiracy offense is the making of the agreement itself (followed by the commission of any overt act), it is not necessary for the Government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

A Defendant can be found guilty of that offense as charged in Count One only if all of the following elements are proved beyond a reasonable doubt:

First: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the indictment;

Second: That the Defendant willfully became a member of such conspiracy;

Third: That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the methods (or "overt acts") described in the indictment; and

Fourth: That such "overt act" was knowingly committed at or about the time alleged in

an effort to carry out or accomplish some object of the conspiracy.

An "overt act" is any transaction or event, even one which may be entirely innocent when considered alone, but which is knowingly committed by a conspirator in an effort to accomplish some object of the conspiracy.

A person may become a member of a conspiracy without knowing all of the details of the unlawful scheme, and without knowing who all of the other members are. So, if a Defendant has an understanding of the unlawful nature of a plan and knowingly and willfully joins in that plan on one occasion, that is sufficient to convict him for conspiracy even though he did not participate before, and even though he played only a minor part.

Of course, mere presence at the scene of a transaction or event, or the mere fact that certain persons may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of a conspiracy. Also, a person who has no knowledge of a conspiracy, but who happens to act in a way which advances some purpose of one, does not thereby become a conspirator.

In this instance, with regard to the alleged conspiracy in Count One, the Indictment charges that the Defendants conspired with each other and other persons to commit bank fraud or wire fraud, or to make false statements to federally insured financial institutions. It is charged, in other words, that they conspired to commit three separate, substantive crimes or offenses.

In such a case it is not necessary for the Government to prove that the Defendant under consideration willfully conspired to commit all of the substantive offenses. It would be sufficient

if the Government proves, beyond a reasonable doubt, that the Defendants willfully conspired with someone to commit one of those offenses; but, in that event, in order to return a verdict of guilty, you must unanimously agree upon which of the three offenses the Defendants conspired to commit. If you cannot agree in that manner, you must find the Defendant not guilty.

Title 18, United States Code, Section 1344, makes it a federal crime or offense for anyone to execute or attempt to execute a scheme to obtain money of a federally insured financial institution.

A Defendant can be found guilty of that offense as charged in Counts Two through Twelve, and Seventy-seven only if all of the following elements are proved beyond a reasonable doubt:

First: That the Defendant knowingly and willfully devised a scheme for obtaining, by means of false or fraudulent pretenses, representations or promises, moneys or funds owned by or under the custody or control of a federally insured financial institution;

Second: That the Defendant participated directly in, or aided and abetted, the making of false pretenses, representations, or promises which were material to the federally insured institution; and

Third: That the Defendant executed, or aided and abetted the execution of the scheme by preparing and submitting and causing to be prepared and submitted to the insured financial institution certain documents.

A federal insured financial institution means any bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, or any savings and loan associations, whose deposits are insured by the Federal Savings and Loan Insurance Corporation.

The word "scheme" includes any plan or course of action intended to deceive others, and to obtain, by false or fraudulent pretenses, representations or promises, money or property from persons so deceived.

A statement or representation is "false" or "fraudulent" if it relates to a material fact and is known to be untrue or is made with reckless indifference as to its truth or falsity, and is made or caused to be made with intent to defraud. A statement or representation may also be "false" or "fraudulent" when it constitutes a half truth with intent to defraud, or effectively conceals a material fact with intent to defraud. A "material fact" is a fact that would be important to a reasonable person in deciding whether to engage or not to engage in a particular transaction.

If you find that the Government has proved these three elements stated above beyond a reasonable doubt, you need not consider whether the false and fraudulent pretense, representation, or promise was a material false and fraudulent pretense, representation or promise, even though that language is used in the Indictment. This is not a question for the jury to decide.

To act with "intent to defraud" means to act knowingly and with the specific intent to deceive someone, ordinarily for the purpose of causing some financial loss to another or bringing about some financial gain to one's self.

Good faith is a complete defense to those charges that require intent to defraud in the indictment since good faith on

the part of the Defendant is inconsistent with intent to defraud or willfulness which is an essential part of the charges. The burden of proof is not on the Defendant to prove his good faith, of course, since he has no burden to prove anything. The Government must establish beyond a reasonable doubt that the Defendant acted with specific intent to defraud where it is charged in the indictment.

One who expresses an opinion honestly held by him, or a belief honestly entertained by him, is not chargeable with fraudulent intent even though his opinion is erroneous or his belief is mistaken; and similarly, evidence which establishes only that a person made a mistake in judgment or an error in management, or was careless, does not establish fraudulent intent.

On the other hand, an honest belief on the part of the Defendant that a particular business venture was sound and would ultimately succeed would not, in and of itself, constitute "good faith" as used in these instructions if, in carrying out that venture, the Defendant knowingly made false or fraudulent representations to others with the specific intent to deceive them.

It is not necessary that the Government prove all of the details alleged in the Indictment concerning the precise nature and purpose of the scheme; or that the alleged scheme actually succeeded in defrauding anyone.

What must be proved beyond a reasonable doubt is that the Defendant knowingly and willfully devised or intended to devise a scheme to defraud substantially the same as the one alleged in the Indictment; and that the act in execution or scheme was performed as charged.

Each separate act of execution in furtherance of a scheme to defraud constitutes a separate offense.

Title 18, United States Code, Section 1014, makes it a federal crime or offense for anyone to willfully overvalue any land to a federally insured bank or savings and loan association.

A Defendant can be found guilty of that offense charged in Counts Thirteen through Twenty only if all of the following elements are proved beyond a reasonable doubt:

First: That the Defendant knowingly overvalued any land, and such overvaluation was a material fact to an insured savings and loan association or insured bank, as charged; and

Second: That the Defendant overvalued the land willfully and with intent to influence the action of the savings and loan association or insured bank upon an application, advance, commitment or loan, or any change or extension thereof.

An "insured bank" means any bank the deposits of which are insured by the Federal Deposit Insurance Corporation. An "insured savings and loan association" means any such institution whose deposits are insured by the Federal Savings and Loan Insurance Association.

The terms "false" and "material" have already been defined for you.

It is not necessary, however, to prove that the institution involved was, in fact, influenced or misled. The gist of the offense is an attempt to influence such an institution willfully overvaluing land.

If you find that the Government has proved these two elements stated above beyond a reasonable doubt, you need not consider whether the false and fraudulent pretense,

representation, or promise was a material false and fraudulent pretense, representation or promise, even though that language is used in the indictment. This is not a question for the jury to decide.

Title 18, United States Code, Section 1014, makes it a federal crime or offense for anyone to willfully make a false statement to a federally insured bank or savings and loan association.

A Defendant can be found guilty of that offense charged in Counts Thirty-six through Seventy-two only if all of the following elements are proved beyond a reasonable doubt:

First: That the Defendant knowingly made a false statement or report concerning a material fact to an insured savings and loan association or insured bank, as charged; and

Second: That the Defendant made the false statement or report willfully and with intent to influence the action of the savings and loan association or insured bank upon an application, advance, commitment or loan, or any change or extension thereof.

The terms "insured bank," "false," and "material" have already been defined for you.

Again, it is not necessary to prove that the institution involved was, in fact, influenced or misled. The gist of the offense is an attempt to influence such an institution by willfully making a false statement or report concerning the matter.

If you find that the Government has proved these two elements stated above beyond a reasonable doubt, you need not consider whether the false and fraudulent pretense,

representation, or promise was a material false and fraudulent pretense, representation or promise, even though that language is used in the indictment. This is not a question for the jury to decide.

Title 18, United States Code, Section 1341, makes it a federal crime or offense for anyone to use the United States mails in carrying out a scheme to defraud.

A Defendant can be found guilty of that offense charged in Counts Twenty-one through Twenty-three, Twenty-six through Twenty-eight, Thirty, Thirty-four and Thirty-five only if all of the following elements are proved beyond a reasonable doubt:

First: That the Defendant knowingly and willfully devised a scheme to defraud, or for obtaining money or property by means of false pretenses, representations or promises; and

Second: That the Defendant used the United States Postal Service by mailing, or by causing to be mailed, or takes or receives therefrom, some matter or thing for the purpose of executing the scheme to defraud.

The terms "scheme," "false," "material," and "intent to defraud" have already been defined for you.

It is not necessary that the Government prove all of the details alleged in the Indictment concerning the precise nature and purpose of the scheme; or that the material mailed was itself false or fraudulent; or that the alleged scheme actually succeeded in defrauding anyone; or that the use of the mail was intended as the specific or exclusive means of accomplishing the alleged fraud.

What must be proved beyond a reasonable doubt is that the Defendant knowingly and willfully devised or intended to devise a scheme to defraud substantially the same as the one alleged in the Indictment; and that the use of the U.S. mail was closely related to the scheme because the Defendants either mailed something, or caused it to be mailed, or took or received a matter or thing in an attempt to execute or carry out the scheme. To "cause" the mails to be used is to do an act with knowledge that the use of the mails will follow in the ordinary course of business or where such use can reasonably be foreseen.

Each separate use of the mails in furtherance of a scheme to defraud constitutes a separate offense.

Title 18, United States Code, Section 1343, makes it a federal crime or offense for anyone to use interstate wire communications facilities in carrying out a scheme to defraud.

A Defendant can be found guilty of that offense charged in Counts Thirty-one through Thirty-three and Seventy-eight through Eighty-four only if all of the following elements are proved beyond a reasonable doubt:

First: That the Defendant knowingly and willfully devised a scheme to defraud, or for obtaining money or property by means of false pretenses, representations or promises; and

Second: That the Defendant knowingly transmitted or caused to be transmitted by wire in interstate commerce some sound for the purpose of executing the scheme to defraud.

The words "scheme," "false," and "intent to defraud" have been previously defined for you.

It is not necessary that the Government prove all of the details alleged in the Indictment concerning the precise nature and purpose of the scheme; or that the material transmitted by wire was itself false or fraudulent; or that the alleged scheme actually succeeded in defrauding anyone; or that the use of the interstate wire communication facilities was intended as the specific or exclusive means of accomplishing the alleged fraud.

What must be proved beyond a reasonable doubt is that the Defendant knowingly and willfully devised or intended to devise a scheme to defraud substantially the same as the one alleged in the Indictment; and that the use of the interstate wire communications facilities was closely related to the scheme because the Defendant either wired something, or caused it to be wired in interstate commerce in an attempt to execute or carry out the scheme. To "cause" interstate wire communication facilities to be used to do an act with knowledge that the use of the wires will follow in the ordinary course of business or where such use can reasonably be foreseen.

Each separate use of the interstate wire communications facilities in furtherance of a scheme to defraud constitutes a separate offense.

Title 26, United States Code, Section 7206(1), makes it a crime for anyone willfully to make a false statement on an income tax return. "Willfully" means with intent to violate a known legal duty.

The Defendant Neder can be found guilty of that offense as charged in Counts Eighty-six and Eighty-seven, only if all of the following elements are proved beyond a reasonable doubt:

First: That the Defendant signed an income tax return that contained a written declaration that it was made under penalties of perjury:

Second: That in this return the Defendant falsely reported a total income in his 1985 return of $53,625 and in his 1986 return a minus $980,377;

Third: That the Defendant knew the statement was false; and

Fourth: That the Defendant made the statement on purpose, and not as a result of accident, negligence or inadvertence.

If you find that the Government has proved these things, you need not consider whether the false statement was a material false statement, even though that language is used in the indictment. This is not a question for the jury to decide.

Count Eighty-nine of the Indictment charges that from in or about May 1984 to in or about May 1988, the Defendants were persons associated with an "enterprise" engaged in, or the activities of which affected, interstate commerce, and that they knowingly and willfully participated in the conduct of the enterprise's affairs "through a pattern of racketeering activity," in violation of Title 18, United States Code, Section 1961 and 1962(c).

The term "enterprise" includes any "partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity." Individuals and corporations are a "group of individuals associated in fact."

The term "racketeering activity" includes any act in violation of Title 18 of the Untied States Code relating to mail fraud (Section 1341) and wire fraud (Section 1343).

The term "pattern of racketeering activity" requires at least two acts of "racketeering activity," sometimes called

"predicate offenses," which must have been committed within ten years of each other, one of which must have occurred after October 15, 1970.

A Defendant can be guilty of that offense as charged in Count Eighty-nine only if all of the following elements are proved beyond a reasonable doubt:

First: That the Defendant was associated with an "enterprise" as defined in these instructions;

Second: That the Defendant knowingly and willfully committed, or knowingly and willfully aided and abetted the commission of at least two of the predicate offenses hereinafter specified;

Third: That the two predicate offenses alleged committed by the Defendant were connected with each other by some common scheme, plan or motive so as to be a pattern or a criminal activity and not merely a series of separate, isolated or disconnected acts;

Fourth: That through the commission of the two or more connected offenses, the Defendant conducted or participated in the conduct of the "enterprises's" affairs; and

Fifth: That the "enterprise" was engaged in, or that its activities affected, interstate commerce.

With respect to the Second specific element defined above, the Government must prove beyond a reasonable doubt that the Defendant under consideration knowingly and willfully

committed, or aided and abetted the commission of, any two of the predicate offenses specifically alleged and described in the Indictment as Counts Twenty-one through Twenty-three, Thirty-one, Twenty-six through Twenty-eight, Thirty, Thirty-two through Thirty-five and Seventy-eight through Eighty-Four, and alleged as racketeering acts 1 through 3, 4(b), 6 though 8, and 10 through 15(g). You are further instructed, however, that you must unanimously agree concerning each Defendant under consideration as to which of the two predicate offenses he is alleged to have committed, or aided and abetted in committing. It would not be sufficient if some of the jurors should find that a Defendant committed two of the predicate offenses while the remaining jurors found that he committed two different offenses; you must all agree upon the same two predicate offenses in order to find a Defendant guilty of Count Eighty-nine.

With respect to the Fifth specific element defined above the requirement that the "enterprise" was engaged in, or that its activities affected, interstate commerce the Government contends that in conducting the affairs of the enterprise the Defendants would: obtain loan proceeds from lenders by interstate and intrastate wire transmissions; mail documents out of the State of Florida for signature and cause them to be returned to the State of Florida as part of various loan and real estate transactions; send correspondence and documents from Jacksonville in the State of Florida to locations outside the State of Florida in support of their attempts to obtain land acquisition and land development loans. The Government contends that documents in support of various loan requests were sent from the State of Florida to the States of Arizona, New York, and to Washington, D.C., causing the transmission of funds by wire in interstate commerce. You are instructed that if you find beyond a reasonable doubt that these transactions or events occurred, and that they occurred in, or as a direct result of, the

conduct of the affairs of the alleged enterprise, the required effect upon interstate commerce has been established. If you do not so find, the required effect upon interstate commerce has not been accomplished.

Title 18, United States Code, Section 1962(c), makes it a federal crime or offense for anyone who is associated with an "enterprise" engaged in, or activities of which affect, interstate commerce, to participate in conducting the affairs of the enterprise through a "pattern of racketeering activity."

The meaning of those terms, and an explanation of what must be proved in order to establish that offense, is discussed in that part of these instructions covering Count Eighty-nine of the Indictment.

However, the Defendants named in Count Ninety of the Indictment the conspiracy count are not charged in that count with violating Section 1962(c); rather, they are charged with knowingly and willfully conspiring to violate that law, the alleged conspiracy itself being a separate crime or offense in violation of Section 1962(d).

So, under that law a "conspiracy" is a combination or agreement of two or more persons to join together to attempt to accomplish an offense which would be in violation of Section 1962(c) as elsewhere defined in these instructions. It is a kind of "partnership in criminal purposes" in which each member becomes the agent of every other member.

The evidence in the case need not show that the alleged members of the conspiracy, in Count Ninety, entered into any express or formal agreement; or that they directly discussed between themselves the details of the scheme and its purpose, or the precise ways in which the purpose was to be accomplished. Neither must it be proved that all of the persons charged to have been members of the conspiracy were such, nor

that the alleged conspirators actually succeeded in accomplishing their unlawful objectives.

A Defendant can be found guilty of that offense as charged in Count Ninety only if all of the following elements are proved beyond a reasonable doubt:

First: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, namely, to engage in a "pattern of racketeering activity" as charged in the indictment; and

Second: That the Defendant knowingly and willfully became a member of such conspiracy; and

Third: That at the time the Defendant knowingly and willfully agreed to join in such conspiracy, he did so with the specific intent either to personally participate in the commission of two "predicate offenses," as elsewhere defined in these instructions, or that he specifically intended to otherwise participate in the affairs of the "enterprise" with the knowledge and intent that other members of the conspiracy would commit two or more "predicate offenses" as a part of a "pattern of racketeering activity."

A person may become a member of this conspiracy without full knowledge of all of the details of the unlawful scheme or the names and identities of all of the other alleged conspirators. So, if a Defendant has an understanding of the unlawful nature of a plan and knowingly and willfully joining

that plan on one occasion, that is sufficient to convict him for conspiracy even though he did not participate before, and even though he played only a minor part.

Of course, mere presence at the scene of a transaction or event, or the mere fact that certain persons may have associated with each other, and have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy. Also a person who has no knowledge of a conspiracy, but who happens to act in a way which advances some purpose of a conspiracy, does not thereby become a conspirator.

The guilt of a Defendant in a criminal case may be proved without evidence that he personally did every act involved in the commission of the crime charged. The law recognizes that, ordinarily, anything a person can do for himself may also be accomplished through direction of another person as an agent, or by acting together with, or under the direction of, another person or persons in a joint effort.

So, if the acts or conduct of an agent, employee or other associate of the Defendant are willfully directed or authorized by the Defendant, or if the Defendant aids and abets another person by willfully joining together with that person in the commission of a crime, then the law holds the Defendant responsible for the conduct of that other person just as though the Defendant had engaged in such conduct himself.

Notice, however, that before any Defendant can be held criminally responsible for the conduct of others it is necessary that the Defendant willfully associate himself in some way with the crime, and willfully participate in it. Mere presence at the scene of a crime and even knowledge that a crime is being committed are not sufficient to establish that a Defendant either directed or aided and abetted the crime. You must find beyond

a reasonable doubt that the Defendant was a willful participant and not merely a knowing spectator.

One of the Defendants is a corporation. A corporation is a legal entity, and it may be found guilty of a criminal offense.

A corporation, of course, cannot act for itself. It may only act through its agents. Agents are the officers, directors, employees, or other persons who may be authorized to act for the corporation. A corporation is legally responsible for those acts or omissions of its agents made or performed within the scope of their employment.

To find a corporate defendant guilty, you must find beyond a reasonable doubt that all the essential elements of the offense, as set forth in these instructions, are present as to the corporation in the form of acts or omissions of its agents which were performed with the scope of their employment. Whether the agents' acts or omissions were committed within the scope of their employment is a question of fact.

To be acting within his employment, the agent first must have intended that his act would produce some benefit to the corporation. Second, the agent must have been acting within his authority. An act was within the agent's authority if it was directly related to the performance of the type of duties that the employee had the general authority to perform or if outsiders could reasonably assume that the agent had the authority to perform the act, judging from his position with the company, the responsibility previously entrusted to him, and the circumstances surrounding his past conduct.

If the agent was acting within the scope of his employment, the fact that the agent's act was illegal, contrary to his employer's instructions, or against the corporation's policies will not relieve the corporation of responsibility for it.

If you find that an act of an agent was not committed within the scope of his employment, then you must consider whether the corporation later approved the act. An act is approved if, after it is performed, another agent of the corporation, with the authority to perform or authorize the act, and with the intent to benefit the corporation, either expressly approves or engages in conduct that is consistent with approving the act.

A corporation is legally responsible for any act or omission approved by its agents.

In these charges, the Court has reviewed the pertinent parts of federal statutes which are alleged to have been violated. Where a statute specifies several alternative ways in which an offense may be committed, the Indictment may allege the several ways in the conjunctive, that is, by using the word "and;" therefore, if only one of the alternatives is proved beyond a reasonable doubt, that is sufficient for conviction, so long as the jury agrees unanimously as to at least one of the alternatives.

You will note that the Indictment charges that the offenses were committed "on or about" a certain date. The Government does not have to prove with certainty the exact date of the alleged offenses. It is sufficient if the Government proves beyond a reasonable doubt that the offenses were committed on a date reasonably near the date alleged.

The word "knowingly," as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

The word "willfully," as that term has been used from time to time in these instructions, means that the act was committed voluntarily and purposely, with the specific intent to

do something the law forbids; that is with bad purpose either to disobey or disregard the law.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, that in a very real way you are judges -- judges of the facts. Your only interest is to seek the truth from the evidence in the case.

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will speak for you here in court.

A form of verdict has been prepared for your convenience.

You will take the verdict form to the jury room and when you have reached unanimous agreement you will have your foreperson fill in the verdict form, date and sign it, and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the marshal who will bring it to my attention. I will

then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.